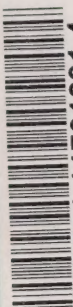


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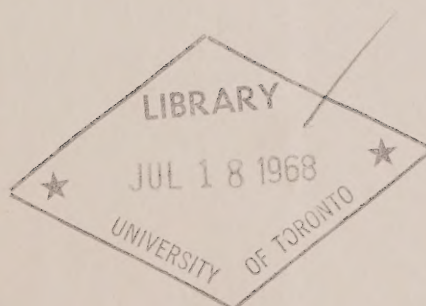
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REPORT
OF
THE COMMITTEE TO SURVEY THE
WORK AND ORGANIZATION OF THE
CANADIAN PENSION COMMISSION
VOLUME II




VOLUME II

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REPORT OF THE COMMITTEE TO
SURVEY THE ORGANIZATION AND WORK OF
THE CANADIAN PENSION COMMISSION

PART THREE

MAJOR AREAS

CHAPTER 12
REGULAR FORCES

PENSION PROVISIONS FOR MEMBERS OF CANADA'S ARMED FORCES IN PEACETIME

The provisions for pension for members of Canada's Regular Force * are set out in Section 13(2) of the Pension Act which reads as follows:

- 13(2) In respect of military service rendered in the non-permanent active militia or in the reserve army during World War II and in respect of military service in peacetime, pension shall be awarded to or in respect of members of the forces who have suffered disability, in accordance with the rates set out in Schedule A, and in respect of members of the forces who have died, in accordance with the rates set out in Schedule B, when the injury or disease or aggravation thereof resulting in disability or death in respect of which the application for pension is made arose out of or was directly connected with such military service.

This Section provides a more restricted basis for pensions for members of the peacetime forces than for those who served during wartime. The words "arose out of or was directly connected with" are taken to mean that the injury, disease or aggravation thereof, or the death, must have been related in some manner to the member's service. The comparative wording in Section 13(1)(a) which covers wartime service is "was attributable to or was incurred during such military service". These words have the broader connotation that the injury, disease or aggravation thereof, or the death, can either be attributable to, or merely have been incurred during the service.

* Where reference is made to Regular Forces in this report it shall be taken to include the MILITIA FORCES.

REPRESENTATIONS AND EVIDENCEGeneral

The Royal Canadian Legion stated in its brief that the problems arising from Regular Force applications for pension could be overcome by a more effective application of the benefit of the doubt, as set out in Section 70 of the Pension Act. ¹

The War Amputations of Canada proposed, in a Supplementary Brief filed with the Committee under date of January 28th, 1966 ² that the existing provision for compensation for disability or death for members of the peacetime forces failed to make sufficient distinction as to whether the cause of the death or the disability was:

1. due to a military function in the true sense of the word; or
2. due to some occupational hazard which might normally be covered by Workmen's Compensation.

This submission suggested, in principle, that the provisions for pension for members of the Regular Force should be set out in legislation separate to that governing pension for veterans.

The Honourable Gordon Churchill, P.C., M.P., stated that, when he was Minister of Veterans Affairs, he considered it desirable to amend the Pension Act with respect to coverage for members of the Regular Force. His views concerning the necessity for such amendment was given as follows: ³

My investigation indicates that Section 13(2) causes the Pension Commission, I would think, more trouble than any section that they have to administer, and information that I received from the Chairman of the

REPRESENTATIONS AND EVIDENCE

Pension Commission some years ago showed that approximately 80% of the applications made by or on behalf of service personnel under that Section were rejected. It seemed to me a rather high figure, and of course trouble came out of the interpretation of that final phrase, "arose out of or was directly connected with military service".

Mr. Churchill spoke further on the subject as follows: ⁴

I hope that you will be able to come up with some satisfactory amendment because I think the Pension Commission has been subjected to quite a bit of criticism, unfair criticism, because of that particular Section. A great many people do not differentiate from the disabled serviceman who has been through difficult areas in wartime from the disabled serviceman in peacetime, and the Pension Commission has had to take the blame, and it has tended to weaken confidence in the Pension Commission. I remember one time I had hoped that that Section could entirely be removed, and that the Defence Department would look after its own people by its own methods. I considered that that should be taken into account. It might be possible for the Defence Department to do that very thing.

Interpretation of: "Arose out of" and "Directly connected with military service".

The submission of the Chief of the Defence Staff claimed that the Pension Commission failed to differentiate between the words "arose out of", and "directly connected with". ⁵ The submission said the Commission took the view that the injury, disease or aggravation thereof, or death must arise directly from military service. This led to over-emphasis on the question of whether the death or injury had occurred in the actual performance of military duty, and too little emphasis on the direct connection with special hazards, circumstances and demands of military service and military environment generally.

REPRESENTATIONS AND EVIDENCE

The Veterans' Bureau was of the belief that the phrase "arose out of" does not have exactly the same meaning as the phrase "directly connected with". The Bureau considered that the phrase "arose out of" had a broader meaning.⁶

The Veterans' Bureau gave the further view that the difficulty in the interpretation of the Section "may stem from the belief by the Commission that both requirements are necessary" and concluded that:

It is difficult to ascertain whether the Commission considers that there is a difference between the phrases "arose out of" and "directly connected with" such military service.

The Bureau concluded that the "Commission does not apply a consistent interpretation of this Section".

Military Compulsion

Representatives of the Regular Force considered that the definition of "military service" by the Pension Commission was too restrictive. Their submission cited the example of "approved sports". The brief stated: ⁷

If the sport is part of the organized sport programme at a unit and is conducted in accordance with service orders, in consideration of the special requirements for members to keep fit, taking part in that sport, must, in our opinion, be considered as part of "military service".

The Brief then quoted several cases which the Armed Forces representatives considered to be pensionable, but where pension had been refused by the Pension Commission.

REPRESENTATIONS AND EVIDENCE

The submission from the Veterans' Bureau cited a number of cases where service personnel had been injured while engaged in sports, but where the Pension Commission could not find evidence to relate such sports to military service.⁸

Your Committee concluded, from a review of these cases, that there was no uniform principle in the application of Section 13(2) to pension claims arising from sports.

Your Committee examined Canadian Forces Administrative Order 50-1 issued under date of October 22nd, 1965. This Order listed fifty sports as being authorized for inclusion in physical fitness and sports competition programmes. The Order stated in paragraph 4:

Sports competitions play a useful, enjoyable and traditional part in military life and are complementary to the compulsory physical fitness programme.

The Order contained the following information relative to coverage under the Pension Act.

47. A member who is injured during participation in a physical fitness training or sports programme may, following release from the Canadian Forces, be entitled to a pension or treatment under the Pensions Act for any resulting disability if it is clearly established that the injury arose out of or was directly attributable to his military service. To make the finding of attributability the proceedings of any summary investigation or board of enquiry investigating the circumstances surrounding such an injury shall include all available evidence as to the effect of military control of the activity and copies of any appropriate written orders. It is not necessary, unless specifically directed, that a member be named in "unit" order as being a participant in the activity providing that the complete details of the member's participation are included in the proceedings of the investigation.

REPRESENTATIONS AND EVIDENCEImproper Conduct

The impact of the Pension Commission's interpretation of improper conduct upon the adjudication of applications for pension for death or disability involving personnel of the peacetime Forces was the subject of a number of representations to your Committee.

Representatives of the Armed Forces and of the Veterans' Bureau both registered objection with your Committee, to the effect that the Pension Commission applied an overly strict interpretation to improper conduct against the applicant.

The provisions of the Pension Act with respect to improper conduct, which apply to peacetime service, are set out in Section 14 as follows:

- 14(1) Subject to this Section, a pension shall not be awarded when the death or disability of the member of the forces was due to improper conduct as herein defined.
- (2) The Commission may, when the applicant is in a dependent condition, award such pension as it deems fit in the circumstances.

The Committee noted a decision, taken at a general meeting of the Pension Commission on September 5, 1963, as follows: ⁹

That the provisions of Section 14 of the Pension Act do not apply to applications under Section 13(2).

The interpretation of this decision, as cited by the Commission Chairman in his presentation to your Committee, was as follows: ¹⁰

It is realized, of course, that the Brief is attempting to express to the Committee certain opinions held by Department of National Defence officials. One obvious error appearing in the

REPRESENTATIONS AND EVIDENCE

Brief is the suggestion that the Commission refused to grant many claims by using the misconduct Section 14(1). The fact of the matter is that this section is not applicable to claims under Section 13(2).

When the airman's death or disability arose out of his own misconduct, negligence, carelessness, or irresponsibility, then of course, it did not arise out of his service. The pilot, for example, who is killed or disabled because he deliberately disobeyed the flying regulations, is not dead or disabled because he was in the service, but rather because he deliberately disregarded the requirements of the service. His death did not either arise out of nor was it directly connected with service. It arose out of his own personal decision to risk his life contrary to the orders under when he was operating.

The Commission Chairman commented further on this subject in his presentation to the Committee under date of June 20th, 1966 as follows: "

To suggest that the Commission will reject a claim solely on such grounds as an improper cockpit check, or neglect to place appropriate lights when a vehicle is stopped on the road, is simply to demonstrate a complete misunderstanding of both the Pension Act and the attitude of the Canadian Pension Commission.

In their most recent submission to the Committee, the representations of the Department of National Defence have again dealt at some length with the relationship between sections 13(2) and 14 of the Pension Act. I am sorry that I do not seem to be able to make clear the Commission's interpretation of this situation. That the situation is beginning to become clear to them is indicated, however, by one statement contained in the most recent representation. At one point, it is said "that for at least two reasons the Pension Commission must consider whether a pension is first awardable at all under Section 13(2)".

The representation goes on to say that: "if the decision is that the injury or death arose out of or was directly connected with military service but involved possible misconduct then a further decision must be rendered pursuant to 14(1)".

REPRESENTATIONS AND EVIDENCE

The Commission having decided that the injury or death arises out of or was directly connected with service, pays the full pension as provided by the Pension Act and interprets Section 13(2) to mean that it cannot under the Act pay any lesser amount. On the other hand, if the Commission decides that the injury or death did not arise out of or was not directly connected with service, it cannot pay any pension at all. Again, it seems to me that the Pension Act is quite clear in this regard, and I might add it is equally clear to the Members of the Commission. ¹²

Your Committee heard comments from two Commissioners at a sitting in Ottawa on May 20th, 1966. Both Commissioners made reference to the relationship between Section 14 and 13(2). Commissioner W.P. Power ¹³ stated as follows:

Well, since it is up to me to reply and since I have been given permission to express my personal opinion I will say that I do not agree with this and never have. I feel that Section 14 applies to Section 13(2) and there is no other provision in the Act which permits the Commission of its own accord to introduce other elements which will eliminate a man from the retention of a pension claim.

Mr. Power stated further:

I feel it is an improper interpretation. I do not feel that I should go into the details.

Another Commissioner, A.D. Decker, made it clear that his understanding of the policy differed significantly from that of the Commission Chairman.

It was evident to the Committee that the policy of the Commission that "the provisions of Section 14 of the Pension Act do not apply to applications under Section 13(2)". (See page 440 hereof) had created great uncertainty within the Pension Commission, the Armed Forces, the Veterans' Bureau, and among officers of veterans organizations.

REPRESENTATIONS AND EVIDENCE

The representations made to your Committee clearly indicate that the Pension Commission's action in adopting a stated policy that Section 114 did not apply to applications under Section 13(2), has had the effect of removing the definition of misconduct from the Act in regard to applications from or on behalf of members of the peacetime forces.*

It appeared to your Committee that the Pension Commission would be well within its rights to refuse pension on the grounds of improper conduct, if the Commission came to the conclusion that such improper conduct was of the nature as envisaged in Section 2(m) which reads as follows:

- 2(m) Improper conduct includes willful disobedience of orders, willful self-inflicted wounding, and vicious or criminal conduct.

The Committee considers that it is irrelevant whether the Pension Commission was correct in taking the position that the provisions of Section 114 of the Act did not apply to applications under Section 13(2). It seems evident that this was the method which the Pension Commission chose to follow. No useful purpose would be served by attempting either to criticize or justify the actions of the Pension Commission in its interpretation of Section 114 in relation to Section 13(2). This argument only serves to cloud the real issue, which is whether the Pension Commission has been applying an unnecessarily strict interpretation to the definition of improper conduct.

The representatives of the Canadian Forces Headquarters considered that this interpretation by the Pension Commission was unnecessarily strict on occasion, and that as a result, pension was refused for what amounted to minor breaches of orders. ¹⁴

* The Commission could still refuse pension on the ground that the injury or disease did not arise out of service.

REPRESENTATIONS AND EVIDENCE

Armed Forces representatives were of the view that wilful disobedience, in the meaning of the Pension Act, should consist only of offences which were on a par with serious acts such as wilful self-inflicted wounding or vicious and criminal conduct. Their submission cited examples of refusal of pension where the Armed Forces personnel had committed what, in the opinion of the Armed Forces, amounted to a minor breach of discipline but where, notwithstanding, the Pension Commission had refused pension on the grounds that there was insufficient evidence to relate the accident to military service as such. It was the contention of the representatives of the Armed Forces that improper conduct was the real ground for refusal of pension. Two of these cases are included hereunder in illustration: ¹⁵

SERGEANT "L"

Sergeant "L" was proceeding on duty in a military vehicle from Camp Gagetown to Shediac, New Brunswick, on 2 June 1962. He deviated from the direct route and proceeded into the city of Moncton. The reason given for the diversion was explained to the sergeant's commanding officer who considered it reasonable and who did not take any disciplinary action. However, while in Moncton both the sergeant and the driver drank some beer. The sergeant was disciplined for drinking on duty and permitting the driver to drink. However, the driver consumed only two beers and stated on oath that it did not in any way affect his driving ability.

They returned to the main highway and were proceeding on toward Shediac in continuation of the original duty trip when the vehicle went off the road on a curve and the sergeant was severely injured. The accident was investigated by both the RCMP and Service Police. No charges were preferred against the driver and there was no indication that his consumption of beer contributed in any way towards the accident.

Nevertheless the Commission apparently conjectured about the effect of the driver's drinking and pension was denied. The decision stated:

REPRESENTATIONS AND EVIDENCE

"The Commission acknowledges that Sergeant "L" was on duty, but found the evidence insufficient to relate the accident to military service as such in the regular force in peacetime."

The Commission having acknowledged that he was on duty, and as he was in a military vehicle proceeding on the proper route pursuant to military instruction, it is not understood how a pension could be denied. There was no evidence whatever that the minor misdemeanor of the sergeant contributed in any way to the accident which resulted in the injury.

FLYING OFFICER "M"

Flying Officer "M" was one of four pilots ordered to fly four Chipmunk aircraft from Dunnville, Ontario, to RCAF Station Centralia on 22 March 1963. Flying Officer "M" was in charge of the flight. After they were airborne, he called the other aircraft to follow him in a line astern formation across the airfield.

He approached the airfield at a low altitude estimated at between 100 and 200 feet. The aircraft then went into a shallow climb to an altitude estimated at 400 to 500 feet, and began to roll. The beginning of the roll appeared to be smoothly executed as a controlled manoeuvre, but as the aircraft reached the inverted position the nose began to drop, and the aircraft veered some 90 degrees to the left of the heading flown when the rolling action commenced. The aircraft struck the ground and took a long bounce during which it burst into flames, and Flying Officer "M" was dead before he could be extricated from the wreckage. The cause of death was injuries sustained through impact and fire.

The findings and conclusions of the Accident Investigation Branch officer who initially investigated the accident were as follows:

Findings

1. There was no indication of any aircraft malfunction.
2. The pilot was relatively inexperienced on type.

REPRESENTATIONS AND EVIDENCE

3. The pilot had never had a unit check out on type.
4. His recent experience on type was limited to cross-country ferry work.
5. His aerobatic proficiency would be of low calibre.
6. His total recent flying was limited.
7. The pilot contravened CAP 100 (flying regulations) by performing an aerobatic manoeuvre at low altitude over an aerodrome without authority.

Conclusions

It is concluded from the evidence of witnesses that the pilot attempted a low altitude roll wherein he lost directional control and in attempting to complete the roll he "dished out" and lost height. There did not appear to be any indication from the manoeuvre completed that would suggest failure of control surfaces and the wreckage indicated all controls serviceable prior to impact. The Chipmunk is not an "easy" aircraft to roll perfectly and lack of practice, low altitude with its changed perspective, and reduced airspeed probably all contributed to an improperly performed manoeuvre at low altitude.

The statement of the Royal Canadian Air Force Board of Enquiry convened to investigate the accident included the following:

"The probable reason is that the execution of the roll was poor. The Chipmunk does not roll as easily as a more high-powered aeroplane, and demands a delicate touch. Flying Officer "M" was probably not sufficiently well practiced at the manoeuvre on the type, and it is suspected that once inverted, and with the nose dropping, his proximity to the ground was momentarily a surprise factor which initiated incorrect recovery action".

REPRESENTATIONS AND EVIDENCE

The Board of Inquiry found that the cause of the crash was that a rolling aerobatic manoeuvre was initiated at too low an altitude, that Flying Officer "M" was on duty at the time of the accident, that "M" was to blame for the accident, and further that the death of "M" was attributable to military service.

The Canadian Pension Commission, in its decision dated 3 October 1963 stated as follows:

"It seems quite clear in this case death was not the result of the requirements of service but rather was the result of a manoeuvre initiated by the deceased's own act, and for these reasons death did not arise out of nor was it directly connected with service in the peacetime force".

The decision went on to state:

"Not pensionable under the provisions of Section 13(2) as death did not arise out of nor was it directly connected with peacetime service".

This opinion was confirmed on the Second Hearing dated August 12, 1965.

In the face of the very clear evidence as to how the accident occurred, the ruling of the Commission that it did not arise out of nor was it directly connected with peacetime service is impossible to comprehend. In their decision they have not mentioned Section 14, which refers to misconduct. It has been ascertained that it is Commission policy "that the provisions of Section 14 of the Pension Act do not apply to applications under Section 13(2)". This policy ruling of the Commission is not understood. The only conceivable reason why a pension could have been refused in this case would be under the misconduct section. The fact that the Pension Commission did not refer to this Section may be an indication that, in their opinion, there was no misconduct and if this is the case there would appear to be absolutely no grounds for not awarding a pension.

REPRESENTATIONS AND EVIDENCE

Even if Section 14 were to be applied to the facts of the Flying Officer "M" case, it would seem, from a perusal of the reasons given by the Accident Investigation Branch officer and the Board of Inquiry, that the immediate and principal cause of the accident was not the breaking of the regulation but rather inability to perform the manoeuvre adequately in the existing circumstances. A skilled pilot with experience on this type of aircraft should have had no difficulty in performing this manoeuvre.

The Veterans' Bureau, in its submission, stated that cases where pension had been refused for members of the peacetime Forces on the grounds of misconduct were "relatively rare" and represented only a small fraction of Regular Force claims.¹⁶ The Veterans' Bureau cited several cases which had been refused in the initial stages of adjudication, but had been approved at Appeal Board Hearings. The point in the cases cited was that, while proceeding under Section 13(2), the Pension Commission was, in a result, using relatively minor infractions of rules as a basis for denying pension.

The submission of the Armed Forces¹⁷ stated that an anomalous situation existed with respect to some benefits paid to employees of the Canadian Government under the Government Employees Compensation Act¹⁸ compared with the compensation available to the members of the Armed Forces under the Pension Act. In particular, the representatives of the Armed Forces pointed to the fact that, under the Government Employees Compensation Act, employees of the Federal Government were subject to the provisions which applied under the Workmen's Compensation legislation of the Province where the employee is usually employed. This

REPRESENTATIONS AND EVIDENCE

had the effect that, in a case of a serious injury or death, Workmen's Compensation could be paid, regardless of whether there was an element of misconduct in the act which brought about the injury or death.

In explanation, the Government Employees Compensation Act provides for refusal of benefits where misconduct is involved, but only in cases where the injury is not so severe as to cause total disablement or death. Where the injured person is totally disabled, or where such person loses his life, the Government Employees Compensation Act provides that compensation will be made available to the person or to his survivors, as the case may be, irrespective of any misconduct.

The representatives of the Armed Forces expressed the opinion that the members of the Forces should be entitled to the same provisions as civilian employees of the Federal Government.

Pensionability while Continuing to Serve in the Armed Forces

The Pension Act Section 2(b) reads as follows:

2(b) "Applicant" means a person who has made an application for a pension, or a person on whose behalf an application for a pension has been made, or a member of the forces in whom a disability is shown to exist at the time of his retirement or discharge, or at the time he ceased to be on active service during World War II, or at the time of the completion of Treatment of training by the Department of Veterans Affairs;

Your Committee was informed by Dr. B. Laurin, Assistant to the Chief Medical Adviser,¹⁹ that the Commission interprets this Section to mean that a person who served in the Armed Forces is considered an applicant "at the time of his retirement or discharge", except those persons who

REPRESENTATIONS AND EVIDENCE

are covered by the Special Duty Area Pension Order.²⁰ Such persons are considered as applicants when the special duty ceases.

The representatives of the Armed Forces²¹ proposed that pensionability should be determined as soon as possible after a disability became apparent, and the fact that the man was serving in, and intended to continue to serve in, the Armed Forces should not be a bar to the submission of an application for pension.

The Armed Forces Brief suggested that the processing of an application as soon as possible after the appearance of the disability, and while the man was still in the Armed Forces, would facilitate the procuring of evidence relative to the cause and/or onset of the disability.

As evidence of the advisability of commencing pension action as soon as possible after an injury, the Armed Forces Brief quoted the following case:

SERGEANT "Q"

Sergeant "Q" was employed as an R.C.A.F. Munitions and Weapons Technician. This employment involved the moving of heavy boxes and other heavy equipment. In 1957, he reported on sick parade for a back pain which had developed over a period of three days during which time he had been moving a number of heavy boxes. This condition has persisted and is now classified as lumbosacral strain.

On November 2, 1965, the Commission ruled:

The applicant was a Munitions and Weapons Technician and as such may have been required to move heavy boxes but, because of lack of proper documentation, it was not possible to confirm that he was on duty at the time of the injuries.

HISTORY

The original pension regulations as contained in Order-in-Council 1916
P.C. 1334 of June 3, 1916 gave to all persons serving in the First Great
War the benefits of the so-called "insurance principle" under which
pension generally was paid when an injury or disease resulting in dis-
ability or death was incurred during war time service. It had prev-
iously been necessary for disability or death to be directly due to
service.

A Special Parliamentary Committee appointed in 1919 "to consider 1919
the questions of Pensions and Pension Regulations, and all matters
pertaining thereto", and to prepare a Bill dealing with pension for the
consideration of the House decided that the "insurance principle" should be
confined to wartime service. This meant that the injury or disease resulting
in disability or death during peacetime service should be dealt with on
the "due to service" principle, as now provided by Section 13(2) of the
Pension Act and in the original Act in the form of a proviso to subsection
1 of Section 11.

During the Debate on second reading of the Bill on June 27th, 1919, the
Honourable N.W. Rowell, K.C., Chairman of the Special Committee, explain-
end the reasons for the Committee's decision to differentiate between
wartime service and that of peacetime. The relevant portion of the House
of Commons Debate is quoted below: ²²

Mr. Rowell: Under the law as it now stands, our pension
system is really an insurance; that is, if a man dies
from any cause during service his dependents are entitled
to pension. The view of the Committee was that after
peace is proclaimed if men are kept in the service for the

HISTORY

purpose of clearing up fag ends, etc., during peace, the insurance element should be eliminated.

Mr. Lemieux: On the other side too?

Mr. Rowell: Either Overseas or here. After peace is proclaimed the insurance element will be eliminated. The man will become entitled to pension if his disability was the direct result of service.

Mr. Lemieux: Suppose a soldier is kept in France with a regiment to collect the debris of the war and in connection with that work he receives a serious wound. In that case, I suppose he will be considered as having been wounded in the performance of war service.

Mr. Rowell: Yes. He would get a pension.

Mr. Lemieux: What the Minister means is that if while engaged in the discharge of his duties he dies a natural death, from illness contracted outside of military functions, the provision he mentions applies?

Mr. Rowell: Yes.

Mr. Griesbach: Surely there will not be many of these cases. Why introduce that element?

Mr. Rowell: Our law as it stands is broader than the pension law in any other country, so far as we know. The insurance feature which I have mentioned is not in any other law, so far as I am aware. In that respect, we give the soldier the benefit of insurance during the whole period of the war.

Mr. Griesbach: That is the principle that underlies all pensions.

Mr. Rowell: No. The principle underlying all pensions is disability due to service. Under our pension law, if a soldier contracts disease under a purely normal condition having no relation at all to service, he becomes entitled to pension. It is really an insurance system.

Mr. Griesbach: In what way will disease or ailment be attributed to service?

HISTORY

Mr. Rowell: If a man contracted a disease when an epidemic broke out in camp, that disease would be contracted in service, and as it now stands he becomes entitled to pension. If he went home on leave and were taken ill at home, unless there is a special provision to change the law, he would still become entitled to a pension. The view the Committee took was that once war is over and peace is officially proclaimed, there is no longer any war risk, and we might then afford to put ourselves in the same position as every other nation now is even during war period; namely, that the pension should be granted only in case of death or disability due to service, and in the latter of the two cases I have mentioned he would not be entitled to a pension.

The new Pension Act was passed by Parliament on July 7, 1919. The clause relating to pensionability for both wartime and peacetime members is set out hereunder. (The peacetime provision is underlined): 23

- 11(1) The Commission shall award pensions to or in respect of members of the forces who have suffered disability in accordance with the rates set out in Schedule A of this Act, and in respect of members of the forces who have died, in accordance with the rates set out in Schedule B of this Act, when the disability or death in respect of which the application for pension is made was attributable to or was incurred or aggravated during military service. Provided that when a member of the forces has, during leave of absence from military service, undertaken an occupation which is unconnected with military service, no pension shall be paid for disability or death incurred by him during such leave unless his disability or death was attributable to his military service. Provided, further that when a member of the forces has suffered disability or death after the declaration of peace, no pension shall be paid unless such disability was incurred or aggravated or such death occurred, as the result of military service.

The annotations to the 1919 Pension Act, prepared by the Legal Adviser to the Board of Pension Commissioners, included the following

HISTORY

reference to Section 11 of the Act: 24

This section is the most important section of the Pension Act. It answers the question: When is a pension to be paid? It further involves one of the basic principles of pension law.

Up until June 3, 1916, a pension was only payable when the disability or death was attributable to or due to service, or the result of service, or in the line of duty, or caused by service. The principle that the state only owed pension when disability or death was the result of service was one upon which pension laws were based in all countries of the world. In all countries the pension law of which has been examined, this is still the principle upon which pension laws are based, although England and France have modified the principle to a certain extent. In Canada, however, the due-to-service principle was entirely discarded in 1916 in so far as members of the Naval and Expeditionary Forces on active service were concerned and a new principle, namely the principle of insurance during service was adopted. It was felt that the state when it removed a man from his ordinary surroundings and placed him in a totally different environment, should accept complete responsibility for whatever happened to that man during his service whether it happened to him as a result of his service or not. Examples of the application of the two principles are as follows:

Example 1: "A" is on leave and is run over by a streetcar and disabled. Under the due-to-service principle he would not be entitled to pension. The accident is one which may happen to soldier and civilian alike. It is an accident which is common to humanity. Under the insurance principle he is pensionable.

Example 2: "B" has just been granted leave. "C" has been ordered to carry a message from one building to another. They both leave the building together and are injured by a fast-driven motor. "B" is not pensionable under the due-to-service principle but "C" is. The latter is in the execution of his duties. Under the insurance principle both are entitled to pension.

HISTORY

In 1920, Section 11 was repealed in its entirety. A separate section was adopted for the peacetime forces, as follows: 25

1920

The Commission shall award pensions to or in respect of members of the forces who have suffered disability in accordance with the rates set out in Schedule A of this Act, and in respect of members of the forces who have died in accordance with the rates set out in Schedule B of this Act, when the disability or death in respect of which the application for pension is made was attributable to military service.

This was the first practical pension provision for disability or death related to peacetime service. Section 11 of the Act provided that pension would be payable when the disability or death "was attributable to military service". In effect this withdrew the "insurance principle" and substituted the "due to service" principle for members of the Regular Forces.

In 1921 this Section was amended by adding the words "as such" to modify "military service". With regard to the change, Mr. J. Paton, Acting Secretary of the Board of Pension Commissioners, stated in an appearance before the 1922 Parliamentary Committee on Veterans Affairs: 26

1921

After the declaration of peace it was necessary to show that the disability incurred or the death occurring had to be directly attributable to military service before it could be pensionable.

There was no further basic change in the definition for coverage of peacetime service until 1941 at which time an amendment to the Act provided that overseas service was covered by the words "attributable

1941

HISTORY

to or was incurred during such military service" and service not in a theatre of actual war by the words "arose out of or was directly connected with such military service". The amended Section of the Act read:²⁷

- 11(2) In respect of military service, during the war with the German Reich, which has been wholly rendered in Canada on and after the twenty-first day of May, one thousand nine hundred and forty, and no part of which has been rendered in a theatre of actual war; and in respect of military service in peacetime, pension shall be awarded to or in respect of members of the forces who have suffered disability, in accordance with the rates set out in Schedule A to this Act, and in respect of members of the forces who have died, in accordance with the rates set in Schedule B to this Act, when the injury or disease or aggravation thereof resulting in disability or death in respect of which the application for pensions is made arose out of or was directly connected with such military service.

With the cessation of hostilities, this Section provided the terms of pensionability for the peacetime Forces. The "insurance principle" was later restored, and made retroactive to September 1939, for those who served in the Canadian Army (Active Force) in Canada.²⁸

In 1946 a new section was enacted to cover peacetime service, as follows:²⁹

In respect of military service rendered in the non-permanent active militia or in the Reserve Army during World War II and in respect of military service in peacetime, pension shall be awarded to or in respect of members of the Forces who have suffered disability, in accordance with the rates set out in Schedule A to this Act, in respect of members of the Forces who have died, in accordance with the rates set out in

History

Schedule B to this Act, when the injury or disease or aggravation thereof resulting in disability or death in respect of which the application for pension is made arose out of or was directly connected with such military service.

This Section preserved the principle of "arose out of" and "directly connected with" for members of the peacetime service. It will thus be seen that it has been basic in our pension legislation that during a time when Canada is at war, members of the Armed Forces are provided with coverage on what has come to be known as "insurance principle". That is to say, pension entitlement will be granted if the death, injury or aggravation thereof was attributable to or was incurred during military service. This principle is embodied in Section 13(1)(a) of the Pension Act, and means, in effect, that service personnel to whom it applies have a pension coverage 24 hours a day.

It is equally apparent that another basic principle of the legislation is that this "insurance principle" does not apply to peacetime service as pension may be paid only if the condition or aggravation thereof "arises out of or is directly connected with service" as set out in Section 13(2). Hence, a member of the Forces serving in peacetime has more limited protection than his wartime counterpart.

It would appear that considerable difficulty developed in regard to pension for peacetime forces in the years following World War II, mainly due to the divergence of opinion as to when an injury or death "arose out of or was directly connected with such military service". As will appear

HISTORY

later, there is still controversy concerning the interpretation of these words. The "on duty" principle also seems to have been the subject of controversy.

The Revised Statutes of 1952 changed the number of the Section to 13. The "insurance principle" was made applicable by special legislation in 1954,³⁰ to persons who enlisted in the Special Force for service in Korea and members of Regular Force during their service in a theatre of operations. It was made applicable, also, to members of the Canadian Forces who are or have been required to serve on or after January 1st, 1949 in special overseas areas as designated by the Governor in Council.³¹

COMMITTEE RECOMMENDATIONS

(61) That the authority for pension for personnel of the Regular Force and Militia be set out in a separate section of the Pension Act, to be administered by the Canadian Pension Commission; this section to contain the following basic principles:

Separate
Section
for Regular
Force

(a) Pension for or on behalf of members of the Regular Force and Militia should be at the same rates as those for or on behalf of persons who served in the Forces during time of war;

Rates

(b) Pension should be paid to or in respect of members of the Regular Force or Militia who have died or who have suffered disability when the death, injury, disease or aggravation thereof was related to service in the Forces.

"Related to"

Without limiting the generality of the foregoing any death, injury, disease or aggravation thereof shall be deemed related to service if incurred as a result of:

(i) Any recreational, physical training or sport activity authorized and organized by service authorities or performed in the interest of the service or any other act incidental to but directly connected with such activity including transportation between normal place of duty and the place of activity.

Recreation

(ii) being transported in a service vessel, vehicle or aircraft as authorized by service authorities or being transported by private or public means pursuant to service travel orders or any act incidental to but directly connected with such transportation;

Transportation
(General)

(iii) being transported as authorized by service authorities between an isolated or remote area and either the nearest place where public transportation facilities are available or a suitable leave and recreational area;

Transportation
(Isolated areas)

COMMITTEE RECOMMENDATIONS

- (iv) service in an area where the incident of the particular disease incurred or aggravated is such as to impose a definite health hazard; Special health hazards
- (v) an act done as part of service operations, training, or administration either in accordance with specific orders or in accordance with established service custom and practice, whether or not failure to perform the act might result in disciplinary action; Service operations training administration
- (vi) exposure to any environmental hazard resulting in industrial disease or other disability as a result of service employment. Environmental hazards
- (c) Any death, injury, disease or aggravation thereof shall, unless the contrary is shown to be true, be deemed related to service if incurred while on travel duty status at a place other than the normal place of duty. Travel duty status
- (d) An act may be related to service even though it is not the kind of act generally associated with service operations, training or administration. Such act need not be military in its nature, and shall not lose its character of being related to service because similar acts may be performed by civilians. Acts not military in nature
- (e) The existing Section 14 of the Pension Act should not apply to members of the Armed Forces but a separate "misconduct" principle be incorporated into the separate part, to provide that no pension shall be payable when the death or disability of the member was due to improper conduct, to be defined as any wilful disobedience of orders, wilful self-inflicted wounding, and vicious or criminal conduct, except that Misconduct
 - (i) if the member is totally disabled (i.e. the disability is rated at 100%) or killed, full pension shall be payable as if no misconduct occurred; and
 - (ii) if the disability is rated at less than 100% the Commission may, when the applicant is in a dependent condition, award such pension as it deems fit in the circumstances.

COMMITTEE RECOMMENDATIONS

- (f) A standard procedure should be evolved under which the Veterans' Bureau of the Department of Veterans Affairs will have the responsibility, subject to the consent of the serviceman, who shall have the right to nominate another representative if he so desires, to handle all pension applications on behalf of Regular Forces personnel while they are continuing to serve, and that for such purposes the Veterans' Bureau shall establish facilities within Canadian Forces Headquarters.

Veterans'
Bureau

- (g) In all other respects, the provisions which shall apply in regard to pensions for members of the Forces in time of war shall apply to the Militia or members of the Regular Force.

Apply in
all other
respects

- (62) That a Standing Advisory Committee be established consisting of three representatives of the Canadian Pension Commission, three members of the Regular Forces and a representative of the Veterans' Bureau, to provide co-ordination and liaison regarding all matters in respect of pension for members of the Canadian Armed Forces in peacetime with the following stipulations:

Advisory
Committee

- (a) The Chairman of the Committee shall be a representative from the Canadian Pension Commission;
- (b) The Secretariat shall be furnished by the Canadian Pension Commission;
- (c) A representative from the Pension Commission's Medical Advisory Branch and a representative from the Directorate of Medical Services of the Armed Forces may be ex-officio members of the Committee, over and above the regular seven members proposed herein.

COMMENTGeneral

Your Committee considers that the question of pension coverage for members of the Regular Forces has been under-emphasized for many years. This is understandable, bearing in mind that after World War I, the numbers of personnel serving in Canada's permanent forces were exceedingly small.

The situation has undergone considerable development and Canada's peacetime Armed Forces today represent more than one hundred thousand personnel. The mobility of Canada's Armed Forces has become a dominant and necessary quality of their efficiency. In the existing pension legislation, certain additions have been made in what are known as "special duty areas" such as Viet Nam and the Middle East. It is desirable, however, that the awarding of pensions for peacetime forces should take into consideration the obvious fact that members of Canada's Armed Forces are required by their new conditions of service, not only to move about a great deal more than the bulk of the civilian population, but also to live in remote areas of Canada and on foreign soil not covered by this special legislation.

Another factor is the change in the nature of the services performed by the Armed Forces over the years. In the early 1920's, when Canada's peacetime Forces were commencing to take shape, the general conception was that pension coverage should be made available for military-type accidents together with coverage for accidents which would arise out of the use of military transport, handling of supplies by manual labour, etc. Certainly, your Committee was unable to find evidence that serious thought was given, at that time, to any type of

COMMENT

coverage except for injuries and accidents directly connected with military functions such as those which might arise from handling of weapons, ammunition or military vehicles. To-day's circumstances require a different approach.

In this respect your Committee wishes to quote Colonel Arthur D. Barron, Director of Industrial and Preventative Medicine for the Armed Forces, who stated before your Committee: ³²

The service is now becoming equivalent to Air Canada, Canadian Pacific Steamship Lines, the biggest transport road-hauling company in the country; we are industry in a big way with all the problems that go with it.

There are approximately 100 specific trades or occupations in the Armed Forces and the question of pension coverage - which is in effect a type of workman's compensation for the Armed Forces - appears to require a broad application of the Pension Act.

Another evident factor giving rise to misunderstanding was the lack of effective liaison between the Armed Forces and the Canadian Pension Commission. This problem is probably due to the fact that there was relatively little pension activity for members of the Forces engaged in peacetime service in the years between World War I and World War II, with the added fact that after World War II the Canadian Pension Commission quite properly concentrated on the development of an adequate pension programme for World War II veterans and their dependants. During the same period, the Armed Forces were faced with changes of their role and methods, and with expanding foreign commitments. Understandably the question of pension coverage appears to have been given secondary importance.

COMMENT

Your Committee would not wish to leave the impression that either the Pension Commission or the Armed Forces have neglected their responsibility in this regard. Your Committee observed that the Pension Commission has shown concern to provide adequate pension coverage for members of the Regular Force, but may have failed to appreciate properly the conditions under which Canada's Forces now operate. By the same token, the Armed Forces have attempted to make use of the pension coverage for its personnel. It is apparent, however, that the Armed Forces have been hampered by a lack of knowledge concerning the administration of the Pension Act, due at least in part to the absence of published directives of the Commission.

It was evident from the Brief submitted on behalf of the Chief of the Defence Staff, and from the subsequent discussions between the Armed Forces representatives and your Committee at its session on May 19th, 1966,³³ that a feeling of dissatisfaction exists within the Armed Forces concerning the extent of coverage given under the Pension Act for persons serving in the Armed Forces in peacetime. Your Committee has noted the understandable reluctance on the part of the Armed Forces to express this dissatisfaction publicly. This reluctance has come about, presumably, because Armed Forces representatives considered that it would be improper to criticize the agency of another government department, i.e., the Canadian Pension Commission.

Your Committee, in reviewing this lack of liaison between the Pension Commission and the Armed Forces, was surprised to learn that there had been no consultation between the two in regard to the preparation of

COMMENT

CFAO 50-1 dated October 22nd, 1965, which governed authorized recreation and sports in the Armed Forces. It seemed to this Committee that a directive of this nature should be prepared in consultation between the Armed Forces and the Canadian Pension Commission, in regard to those aspects of the Order which concern pensionability.

In fact, your Committee considered that a notation should be published with any order of this type, stating that such has been prepared in consultation with the Canadian Pension Commission. This would ensure that the member of the Forces and his dependant would be more accurately apprised of their rights under the Pension Act.

It is apparent to your Committee that the members of the Forces serving in peacetime are not only subject to hazards peculiar to military service, but also to many of the dangers inherent in industrial employment. For this reason, the Committee considers that the pension coverage for members of the Armed Forces should incorporate not only the general principles of pension law as it applies to veterans in Canada, but should contain also such modification as might be necessary to take into account the special circumstances which obtain in the Armed Forces in peacetime.

In recommending this broader approach to the pension rights of the peacetime forces your Committee would not leave the impression that there should be any change in the protection given by the Special Duty Area Pension Order. In effect, this order places such personnel facing special hazards under the same protection and coverage as those who served in time of war. Your Committee considers this action to be both adequate and essential.

COMMENT

Extent of Coverage

Your Committee noted the various interpretations placed upon the words "arose out of or was directly connected with".³⁴ It seems, from an examination of the historical background, that these words were intended to differentiate between the coverage for wartime service and peacetime service. The Pension Act provides coverage for wartime service under the words "attributable to and incurred during service" (i.e., the insurance principle) whereas the intent of the words "arose out of" and "directly connected with" which govern pensionability for peacetime service was deemed, by your Committee, to mean that pension could be awarded only where the service factor was present and could be considered as the cause.

It seems evident that the words "arose out of" and "directly connected with" have been given no consistent interpretation and have created difficulties to both the Pension Commission and those who appear before it. For this reason your Committee recommends that the words "arose out of or was directly connected with" should be replaced with the simple statement "related to service in the Forces".

The confusion that surrounds the present coverage for peacetime service could be clarified to a considerable extent, provided that the meaning of the proposed wording "related to service in the Forces" is amplified in the Act as suggested in your Committee's recommendations, and by Commission directives; and provided there is a measure of liaison between the pension administrators and the Armed Forces.

COMMENTImproper Conduct

Your Committee considers that provisions regarding improper conduct, as set out in Section 114 of the Pension Act, are not appropriate to the circumstances of members of the Regular Forces and need amendment.

This consideration is based primarily on the fact that improper conduct in the Regular Forces touches upon military law which in many instances contains principles which have no parallel in civilian law. The maintenance of a proper standard of discipline in the Armed Forces is at the very root of military life, and for this purpose military law lists offences which have no counterpart in civilian life. For example, a soldier might be sent to detention for being absent without leave. A civilian committing a similar offence faces a maximum punishment of dismissal.

Your Committee examined some cases where the authorities in the Armed Forces had found it necessary to take disciplinary action in accordance with the military code. The military authorities had no desire to deprive the member or his dependants of pension benefits which may be due because of death or disability resulting from the act in question. However, the Pension Commission repeatedly took note of the fact that the military authorities had concluded that there was a breach of orders or military discipline, and were influenced thereby.

The conflict in this type of case is evident. The military authorities are required to make a finding to the effect that there has been a breach of military conduct, and must necessarily take disciplinary action if the circumstances require it, without giving thought to whether

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COMMENT

or not the member or his dependant should be given consideration in respect of pension for any death or disability which may have resulted. On the other hand, the Pension Commission has no direct interest in the maintenance of military discipline and is empowered to look only at the question of whether any such death or disability arose out of or was directly connected with service. Hence, it can be seen that the military authorities, in attempting to maintain effective military discipline, must on occasion take disciplinary action. However, a side effect which would not be intended could be refusal of pension.

In respect of improper conduct, your Committee considers that the members of the Regular Forces should be dealt with in a manner which is analogous to the provisions for Workmen's Compensation in Canada. In this regard, the provision for pensionability for members of the Armed Forces should follow closely the Government Employees Compensation Act which provides, in general terms, that persons employed by the Federal Government should be entitled to Workmen's Compensation benefits in a similar manner as conferred by Workmen's Compensation legislation of the Province in which the employee is usually employed.

The general principle observed in the Workmen's Compensation Acts in the Provinces of Canada concerning misconduct is quoted herewith from the publication "Workmen's Compensation in Canada". 35

No compensation is payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement. This wording of the Ontario Act is reproduced in the Statutes of Prince Edward Island, Quebec and Saskatchewan, and with some slight variations in

Comment

Alberta. In Newfoundland and Nova Scotia, the law is similar, but the exception in favour of a workman whose misconduct caused the injury is limited to cases where the resulting disablement is permanent. The British Columbia and Manitoba Acts have a further variation of this provision, stating that compensation is not payable in such circumstances unless the injury results in death or serious or permanent disablement. The New Brunswick Act differs from the other Acts in stipulating that no compensation shall be paid if the accident was, in the opinion of the Board, intentionally caused by the workman or was wholly or principally due to his intoxication or serious or wilful misconduct, and did not result in the death or serious and permanent disability of the workman.

It can be seen, from the above synopsis, that Workmen's Compensation is payable under Provincial Laws in Canada, even though the death or injury is attributable to the serious and wilful misconduct of the workman, if death or injury is sufficient to cause serious (and in some cases permanent) disablement. Your Committee considers that, for members of Canada's peacetime forces, the same provision should apply.

If your Committee's recommendation concerning the adoption of a separate "misconduct" principle for members of the Regular Force is accepted, the existing provision in Section 114 (2) under which pension may be paid if the applicant is in dependent circumstances, regardless of whether improper conduct was involved, should be carried over into the proposed legislation for the Regular Forces. The existing subsection (4) of Section 114 applies only for members who saw service in a theatre of actual war and hence would not be applicable to members of the Regular Forces.

COMMENT

Your Committee need not comment upon the reasons given by the Commission Chairman for the decision taken at its general meeting on Sept. 5th, 1963 in which it stated:

That the provisions of Section 14 of the Pension Act do not apply to applications under Section 13 (2).

The Commission presumably considers that if a member of the Regular Force is guilty of misconduct, he places himself beyond the terms of military service. Therefore, any disability or death which arose from that act would not be pensionable.

If the Commission decided that a pension could not be granted because of misconduct, the ruling on the case should so state. It could be that the Commission did not wish to be in a position of having to refuse a pension in writing, on the grounds of misconduct. Hence, it may have seemed more palatable to state, as it did in these cases, that the death or disability was "not pensionable under the provisions of Section 13 (2) as death did not arise out of, nor was it directly connected with peacetime service".* Notwithstanding, if in fact, a pension is refused on the grounds of misconduct the applicant and those who represent him are entitled to have this decision, in written form, as part of the ruling.

* See decision on page 447 hereof.

COMMENTUse of Veterans' Bureau

The application procedure for members of the Regular Force is "automatic" in that, on release from the Forces, the dischargee's file is passed to the Pension Commission for consideration.

This procedure may well have been essential for reasons of both convenience and administrative efficacy during the period of demobilization following World War II. Your Committee considers, however, that the same considerations do not now apply. Accordingly pension applications stemming from disability suffered by personnel of the peacetime forces should be processed immediately upon its appearance, regardless of whether the member is being released from service.

Furthermore these applicants should have available, where desired, the service and experience of the Veterans' Bureau of the Department of Veterans Affairs. This procedure would ensure that all pertinent material will be referred to the Pension Commission in a standard form of application, with the Veterans' Bureau obtaining such supporting data as it deems necessary.

In many instances the pension application will be a routine matter. The use of the Veterans' Bureau is considered to be essential, however, in order to make certain that no circumstances or information are overlooked when the Pension Commission is requested to review initial applications on behalf of persons who either continue to serve, or who are being retired from the Armed Forces.

COMMENT

It may be necessary for the Armed Forces to devise an internal procedure which would provide for referral from the Armed Forces to the Veterans' Bureau. Particular care would have to be exercised, however, to ensure that a person who may have incurred a disabling condition, and who desires to continue to serve in the Armed Forces, will make application for pension only on a voluntary basis. Should such person wish to defer application until retirement from the Forces, he should be free to do so.

The recommendation of the Committee that members of the Forces should be permitted to apply for pension when a condition which is presumed to be disabling has occurred, without having to wait for retirement from the Armed Forces, arises from the fact that disability may well affect that person's normal advancement in rank and pay, but would not necessarily mean that he could not continue to serve in the Armed Forces if he is still able to meet the required medical standards for his rank and status.

If such person is willing to continue to serve at his existing rank or level of training, there seems to be no reason why he should not be able to receive compensation by way of pension for a disability, bearing in mind that such disability may well be a factor in preventing him from receiving additional income by way of promotion to a higher rank.

The existing Pension Act is so drafted that a person applying for pension while still in the Armed Forces, who is required to go through a second hearing and an appeal in accordance with Section 59, would have no further rights under the Act for any future disabilities because of

COMMENT

the limitation under the present wording of the Act in Section 59(3)(c), that "the Commission may entertain no further application in respect of any disability whatsoever, other than an application before an Appeal Board of the Commission".

For this reason, many service personnel may prefer to wait for their retirement from the Armed Forces before applying for pension. This Committee has seen fit to recommend (See Recommendation No. 20 (a)*) that the procedure under the Pension Act for all classes of applicant should provide for an initial review by the Pension Commission in connection with each new or separate disability. Should such recommendation be adopted, the restriction which, under the present Act, would prevent a member of the Armed Forces making application for a new condition if the appeal had been refused in connection with a previous condition, will be removed.

* See Volume I, Chapter 6, page 154.

REGULAR FORCESREFERENCES

1. Proceedings of Committee Sessions, Volume III, Page L-25.
2. Ibid, Volume II, Page K-72.
3. Ibid, Volume V, Page T-1.
4. Ibid, Volume V, Page T-2.
5. Ibid, Volume IV, Page N-4.
6. Ibid, Volume VI, Page KK-76.
7. Ibid, Volume IV, Page N-14.
8. Ibid, Volume VI, Pages KK-76 and KK-77.
9. Minutes, General Meeting of Canadian Pension Commission, Sept. 5th, 1964.
10. Proceedings of Committee Sessions, Volume V, Pages AA-10 and AA-13.
11. Ibid, Volume VII, Page NN-5.
12. Ibid, Volume V, Page AA-10.
13. Ibid, Volume VII, Page MM-57.
14. Ibid, Volume VII, Page LL-5.
15. Ibid, Volume IV, Page N-25.
16. Ibid, Volume VI, Page KK-83.
17. Ibid, Volume IV, Page N-13.
18. SC. 1955, C.33 s.2 Assented to June 28th, 1955.
19. Proceedings of Committee Sessions, Volume IV, Page AA-87.
20. SC. 1964-65, C.34 Assented to December 2nd, 1964.
21. Proceedings of Committee Sessions, Volume IV, Page N-54.
22. House of Commons Debates, June 27th, 1919, Pages 4179-80.
23. SC. 1919, C.43, s. 11(1)(2) Assented to July 7th, 1919.
24. Pension Act with Annotations, July 1st, 1919.
25. SC. 1920, C.62, Assented to July 1st, 1920.
26. Proceedings, Parliamentary Committee on Pensions, Soldiers' Insurance - Re-establishment, 1922, Appendix 2, Page 354.
27. SC. 1941, C.23, Assented to June 14th, 1941.
28. Order in Council, P.C., 2077, May 23rd, 1946.
29. SC. 1946, C.62, Assented to August 31st, 1946.
30. Veterans Benefit Act, SC. 1954, C.65, Assented to June 26th, 1954.
31. Order in Council, P.C., 1965-1254, July 9th, 1965.
32. Proceedings of Committee Sessions, Volume VII, Page LL-30.
33. Ibid, Volume VII, Page LL-12 to LL-14.
34. Pension Act, Section 13(2).
35. Workmen's Compensation in Canada - a compilation of Provincial Laws - October 1963, published by Legislation Branch, Dept. Labour of Canada.

GENERAL

The authority for the basic rate of pension is found in Schedule A of the Pension Act and in Section 13(1)(a) which reads as follows:

- 13(1)(a) Pension shall be awarded in accordance with the rate set out in Schedule A to or in respect of members of the Forces when the injury or disease or aggravation thereof resulting in the disability in respect of which the application for pension is made was attributable to or was incurred during such military service;

Section 13(2), which deals with pension for members of the Peacetime Forces also refers to the rates set out in Schedule A.

Schedule A authorizes specific amounts for pensions in 20 classes ranging from 100% to 5%. The basic pension is set out for ranks up to Captain (Naval) Colonel (Army) and Group Captain (Air Force) and provides additional pension for higher ranks. The schedule also provides additional pension for married members and additional pension for children of pensioners.

REPRESENTATIONS AND EVIDENCE

Treasury Board Minute No. 64647 of September 8, 1965 stated that this enquiry into the organization and work of the Canadian Pension Commission would not be limited in its scope. * The statement released by your Department to the press under date of September 16, 1965 ** also referred to your Committee's terms of reference, as follows:

The Committee is not limited in its scope of this report, but it has been specifically instructed to study all matters relating to, firstly, the organization, methods and procedures used in the adjudication of disability and other pensions paid under the Pension Act; and, secondly, the interpretation by the Canadian Pension Commission of such sections of the Pension Act which it feels should be considered.

This statement was repeated in the notice published by your Committee in daily newspapers and forwarded to veterans organizations under date of October 17th, 1965.

Your Committee informed veterans organizations verbally that there was some question as to whether or not the terms of reference included consideration of the basic rate of pension. Notwithstanding, many organizations made representation in this regard. Your Committee has considered that it would not be pertinent to its enquiry to consider the quantum of pension. Your Committee has forwarded to you, under separate cover, copies of the representations which dealt with the question of pension increases. In this report your Committee has considered it relevant to deal only with the basis upon which pension is paid, and this because of its relationship to pension for multiple disabilities.

The representations made in regard to this basis are set out hereunder

* See Volume I, Chapter 1, Appendix III, page 21
 ** See Volume I, Chapter 1, Appendix I, page 19

Representations and Evidence

War Pensioners of Canada (National Association): The brief from this Association, presented to the Committee under date of January 20th, 1966, stated as follows: :

The basis of arriving at any amount to be considered as 100% disability should be the ability of the pensioner to provide a living for himself and his dependents in the labour market. This is an ever-changing figure and appears to be a classification rapidly disappearing as we reach the state in economic and industrial expansion where labour is hardly an employment classification that we can define.

The rates in pay for labour can vary from the minimum of \$1.25 per hour to \$2.95 per hour or, on a yearly basis of \$2600. to \$6136. per year based on the 40 hour week. In view of the economic growth and the increased demands of labour, it is not considered unreasonable to request a substantial increase in the basic rate of disability pension for all disability pensioners in order to compensate for their loss of ability and earning power in the labour market.

In support of the brief, Mr. John Black, National President, stated in part;

We haven't made up our minds unanimously as to what should be used as the basis, but I think it has been proven that all veterans, or all those in receipt of pensions, aren't necessarily all labour market personnel, and I think that you would find a lot of them have turned out to be tradesmen; we have lawyers, judges, doctors; you have everybody that has been in the Services, and personally I don't think that should be classified with the lowest labour wage in the country.

I believe that we should hit a happy medium; if you wish to stay within the Government organization and make a similar classification with it, we should get----- I don't honestly know all the different classifications, but I was thinking more of a Customs Officer or something along these lines.

National Council of Veterans Associations: In its appearance on January 21, 1966 representatives of the National Council suggested that the basic rate of pension had not kept pace with the premise that

Representations and Evidence

pension should be based on the earning power of a man in the class of the untrained labourer. Mr. G. K. Langford, Q.C., Chairman of the National Council, referred to this premise, as brought out in the Report of the Royal Commission on Pensions of 1922-24, which stated that pensions should be based on the loss of degree of earning power "in the class of the untrained labourer". He stated: 2

Whether the initial premise of the Ralston Commission is a wise one or not ---- it has been established for a great many years, but what we are suggesting is that the basic rate of pension has not even kept pace with that branch; and that assuming that they had kept pace with it, up to 1939, they have fallen far short of it since that time.

We have no direct quarrel with this premise; we have been trying to live with it. I assume the basis of it really is that the physical injury applies, and that you have lost the basic labour skill, although you still have the mental skill and may be able to indulge in some other forms of employment. But what we are recommending here is that some serious effort may be made to keep pace with compensation in terms of the basic labour scale. Certainly increasing since World War II they have fallen farther and farther behind the average wages level of the country and of the inexperienced cleaners and helpers, custom guards, etc. I am not sure just how basic a basic skill should be to fit into the terms of the Ralston Commission, but the initial cleaner and helper employed by the Department of Veterans Affairs is pretty basic

Toronto and District Ex-Servicemen's Advisory Committee: In its appearance before your Committee on January 22nd, 1966, this Committee proposed that the basis for pension should be the average wages in the skilled labour market. The representatives stated: 3

The 100% pensioner who is disabled totally will not be in the position of being a poor relative, but will be able to live in some parity with the people with whom he is normally travelling.

Representations and Evidence

We do believe sincerely that this should be one of the first revisions that could be made with the basic rate, but not to change so much an increase in the basic rate as the manner in which they are computed. If they would change that from the unskilled labour market (\$1.25) up to the skilled labour market (\$3.50 or \$4.00 an hour) then a man, who through no fault of his own is unable to work, would at least be able to live with his brother

Canadian Corps Association: Mr. E. J. Parsons, representing the

Canadian Corps Association, stated before your Committee on January 24, 1966,

Lab: 4

The principle of basing pension on the earnings of a common labourer was not a good yardstick', because it is not a constant factor, anyway - it varies too much, it varies with the times. I have always felt that some category of the Civil Service could be used as a yardstick.

Mr. Parsons stated further:

I don't feel that his (the pensioner's) family should enter into the picture at all. I am thinking in terms of the single, 100% veteran alone.

We have a category in the Civil Service, one or two of them in the lower brackets with the Civil Service, with their Civil Service Associations, agree as a sustaining wage; it remains fairly constant, much more so than the earnings of a common labourer would. To my mind it is a much better yardstick.

Army, Navy and Air Force Veterans: Mr. J.C. Lundberg, President of

the Army, Navy and Air Force Veterans, appearing before your Committee on

January 26th, 1966, stated: 5

The original intention of Parliament was to relate the rates of war disability pension compensation to the rates paid to the common labourer. The wage scale of the common labourer has greatly increased while the basic rate of war disability pension compensation has not kept parallel.

Representations and Evidence

We would further recommend that periodical review of the basic rate of war disability compensation be adopted to determine an adequate rate to correspond with the cost of living index as is frequently used as the basis for granting pay increases to the members of the Armed Forces and the Civil Service

War Amputations of Canada: The representatives of the War Amputations of Canada asserted that it was no longer practical to use the "average wage for unskilled employment in the general labour market" as a satisfactory basis for pension, stating that: ⁶

Neither the Dominion Bureau of Statistics, nor the Federal Department of Labour have been able to give this Association an accurate estimate of the average wages for this group

The association brief continued:

It may not be feasible to adopt an effective basis or yardstick such as the wage for unskilled labour. At the same time, common sense would dictate that the average veteran had he not become disabled, would have the capacity to earn at least \$5400. per year.

Should he be fortunate enough to earn monies in addition to such pension, this man should not in any way jeopardize the amount to which he is entitled by reason of compensation for his war wounds

This association contended further that:

The war veteran is entitled to the full rate of compensation which he might have expected to earn were he not disabled regardless of whether or not he is married.

This contention is, of course, based on the obvious fact that a wage paid by an employer is for work done and has no relationship to whether or not the employee is married, or has dependents, to support.

Royal Canadian Legion: For reasons explained earlier, this organization made no reference to the basic rate of pension in its submission to

Representations and Evidence

your Committee under date of January 31st, 1966. The Legion did indicate, however, in a letter to your Committee under date of Sept. 28, 1966, that its policy with respect to basic rate was as stated in its brief to the Prime Minister of Canada and the Cabinet under date of November 25th, 1965. This brief suggested that pension be made subject to cyclical review provided that the Government and the Legion could agree on a common standard for calculation of the basic rate of pension.

The Legion's brief referred to the principle that pension should be based on "the earning power of a man in the class of the untrained labourer" to which reference was made in the report of the Royal Commission on Pensions 1922-24. The Legion Brief stated as follows:

We recognize that at best, this can only be a rough guide, but any standard on which future rates are based cannot fall below the minimum set by that Commission. It is obvious that the basic rate of pension must always be that of the single 100% pensioner. No other category is acceptable. In 1920 the rate paid to such pensioner was \$900.

In order to relate the comparative income of the pensioner to his civilian counterpart in 1920, we must accept the Civil Service category which at that time approximated the \$900. paid to the 100% pensioner

The Legion brief referred to the possible comparison using the rate for a married pensioner, as follows:

Since the Government has suggested making comparisons with the present day position of the married pensioner with two children we wish to observe that the pension rate for this category in 1920 was \$1524. per annum. A study of salaries paid to Civil Servants in 1920 reveals that the Postal Clerk 2 (City sorter) and Plotman 2 (Head Plotman) received annually approximately the same amount as the married pensioner with two children.

Representations and Evidence

The Government's arguments do not seem to be based on fact. The average pensioner is not a married man with two children, nor could the basic pension rate be related to any other individual than the person with a disability - that is the pensioner himself.

The brief then went on to suggest that an increase in pension rates should bring the 100% pensioner at single rates up to the figure of \$3880. which the cleaning service man (cleaner and helper) in the Public Service of Canada received at that time.

L'Association du Royal 22ième Régiment: This Association appeared before your Committee on March 5th, 1966. On the question of basic rate, its brief stated: 9

The basis of the pension rate is believed to be the amount which an able-bodied man could earn on the common labour market. This was presumably an acceptable basis in 1919. It must be pointed out now, however, that there is no classification such as common labour. Some of the average wage rates are given below with the increase from 1919 to 1964.

<u>Industry</u>	<u>1919</u>	<u>1964</u>	<u>Increase</u>
Logging	58.9	219.6	373%
Construction	40.1	223.6	558%
Personal Service	38.5	182.2	473%

It would appear from the foregoing that there is an immediate requirement to formulate a new basis for computation of the basic rate of pension for veterans

Mr. R. Emard, M.P.: In a prepared brief submitted to the Committee under date of March 24th, 1966, Mr. R. Emard referred to the submission of L'Association du Royal 22ième Régiment and stated: 10

I am in agreement with the views as expressed in this submission. I would wish to add, however, that in requesting a higher rate of pension, the Royal 22ième Régiment has not included what, to me, is a very important argument.

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The Brief states that the basic rate of pension was based on the earnings of a common labourer in 1919, and goes on to say that the earnings of this category have increased in a far greater percentage than 100% pension.

All of this is true. However, in today's labour force the worker receives not only his basic pay, but also a great many fringe benefits. These include time and one-half and double time for extra hours of work, extra pay in lieu of holidays, hospital, medical insurance, welfare funds to meet unexpected expenses, and others.

The basic rate of the pension provides only an actual amount of dollars; therefore, it seems possible to contend that this basic rate of pension has fallen even farther behind than in the brief submitted by the Royal 22nd Association, due to the simple fact that the common labourer today receives not only a good living wage, but also has a very considerable number of fringe benefits. It seems logical that the pensioner is entitled to some additional pension in lieu of these fringe benefits .

In support of this part of the brief Mr. Emard stated as follows:

'I may mention that I have been negotiating with unions for many years, and I remember industry companies were telling us all the time "Don't forget you get so much fringe benefits". The actual value of the fringe benefits may be from 40 to 70 cents an hour. I think this should be considered, if we are looking to an increase in pension .

Mr. David Groos, M.P.: In a prepared Brief, Mr. Groos referred to the basic rate of pension as follows: "

100% DISABILITY - My third point is that I believe the basic rate now used for 100% disability is unsatisfactory. I think it is too low, and I dislike what I am told is the wording of the clause which established the rate, and is something to the effect that the rate is to be based on the prevailing rate for unskilled workers in the Government.

I believe they claim to use the rate for cleaning men and janitors. Whatever they use, I don't believe that the amount today of \$200.00 a month is realistic. I don't think a disabled veteran can live decently on that amount of money. I believe that knowledge of this figure must affect the decisions of the Canadian Pension Commission when they come to awarding the percentage of disability. For example, knowing that a person cannot support himself on 75% of this basic figure in today's

Representations and Evidence

selective unskilled labour market, surely they are more inclined to grant a higher percentage of disability than they might otherwise be inclined to do. I am not going to suggest what I think is the right figure, but I certainly think that, whatever it is, it should be tied in to the cost-of-living index in some way just as it is in the Canada Pension Plan and, right now, the rate should be struck that would permit a pensioner living on 100% disability in any part of Canada to live out the rest of his life in decency and comfort. If the price is high, then we must accept it as being a part of the price of going to war. The country will recognize this undoubted fact .

In support of his Brief, Mr. Groos referred to the unskilled labour market formula in the following terms:

Those who are living on 75% or 50% disability are finding that it is very difficult for them to get employment, particularly if they are unskilled, they are constantly coming along to me pointing out that they just cannot live on this amount of money, and after all if they have had their disability caused through the war, while they were young men, they did not have a chance of acquiring the skills which would have put them into a better position to compete in today's labour market. They resent the fact that they are being paid a pension based on the lowest scale, or on an unskilled rate, and it is pretty hard to argue with them when you see that out there in particular, and this is the only area of which I really have any knowledge, that the older veteran with a high disability pension is having a very very difficult time.

Mr. Groos made a number of other points as follows:

First of all, the Government, trying to establish a rate which is standard across the country, is being a little unrealistic, because the standard of living is not the same all across the country, and the costs of living are not the same all across the country, so a person who has been living in an area which now has a high cost of living is at a disadvantage if he is living on a fixed income. That is one.

The second, I think to establish it at such a low level is not entirely satisfactory, and I think they should connect it in some way with the cost-of-living index, the established cost-of-living index in various parts of the country .

HISTORY

The Special Committee on Pensions for Disabled Soldiers was appointed at the 1916 Session of Parliament "to consider and report upon the rates of pension to be paid disabled soldiers of the Canadian Expeditionary Force and the establishment of a Permanent Pension Board and any other matters relating to or connected therewith". 12

Mr. E. H. Scammell, Secretary of the Military Hospital and Convalescent Homes Commission, stated before this Committee that his Commission had requested that pensions should be according to disability and not according to the loss of earning power. Mr. Scammell gave the following explanation: 13

If a man has lost an arm or a leg, or has suffered in some special manner which can be diagnosed then it should not matter if he is a lawyer, a banker, or a labourer, the pension should be the same in all cases.

The Pensions and Claims Board of the Department of Militia and Defence made the following recommendation to the 1916 Committee: 14

VII. All pensions to members of the Canadian Militia disabled on Active Service should be awarded in direct proportion to the impairment of capacity for earning a livelihood in the general market for untrained labour.

N.B. Men enlisting for Active Service in the Canadian Militia as privates bring to the service of their country a healthy body. The previous occupation of the recruit is not recognized as having any reference to the service which the soldier could give the State, unless it secures for him a higher rank than that of private, in which case the return made to him by the State in pay and pension is proportionately increased. The private soldier then is looked upon as offering merely a healthy mind and body to the public service. For practical purposes the market for healthy bodies is said to be the 'general market for untrained labour'. Upon leaving the Service any physical or mental disability which may have been suffered is estimated according to the extent by which it reduced the capacity of the individual concerned for earning a livelihood in the general market for untrained labour.

HISTORY

It is to be noted that it is the impairment of capacity for earning, without reference to the former occupation or income, which is to be determined .

In his appearance before the 1916 Parliamentary Committee, Colonel C. W. Belton, member of the Pensions and Claims Board of the Department of Militia and Defence, referred to the Militia Pension Act which was the authority for military pensions, at that time and stated as follows: ¹⁵

In the first place, the Act uses the expression 'incapable of earning a livelihood'. Now, what is a livelihood, in the opinion of this Committee? Is it what the man earned in his own particular occupation? We have to get some basis. The practice in the service has been to take the general labour market for unskilled labour as a basis. No matter what your occupation is, whether a lawyer, doctor, or whatever you may be, we size up your disability according to your ability to earn a livelihood in the unskilled labour market .

A document entitled "Canadian Pensions and Proposed Bill with Remarks 1917," ¹⁶ which is believed to have been prepared by Mr. Kenneth Archibald, the Legal Adviser to the Board of Pension Commissioners * included a section on the principles of Canadian Pension Law. This document cited three basic principles :

- A pension is given as a mark of gratitude
- A pension is given in payment of a debt
- A pension is given to provide subsistence

* There is no proof that this document was prepared by Mr. Archibald. However, Sections from it have been quoted in the 1919 Special Committee on Pensions and Pension Regulations and in the Report of the Royal Commission on Pensions 1923-24. The Report of the 1919 Special Committee mentions, in its table of Contents, a Report entitled "Recommendations of Board of Pension Commissioners and Interpretation of Regulations" (Mr. Archibald) which contains quotations from the 1917 document. The Report of the Royal Commission, Sessional Paper 203, page 44 quotes from the 1917 Report identifying the extract as being from "A Memorandum prepared by those who had in charge the drafting of the Act". Your Committee, after studying the various reports involved, believes that the Report referred to was prepared by Mr. Archibald.

HISTORY

The report states on page 11:

It is clear, therefore, that the three basic principles of Pension Law are applied in our laws more or less indiscriminately, and are inextricably intertwined.

It would seem, however, that it ought not to be too difficult to base a new law soundly once the extent and value of each of these principles separately, or in combination, is understood .

The report states further on page 12:

GRATITUDE, The conclusion is, therefore, that the principle of gratitude forms a very minor part in the foundation of Pension Law.

DEBT - The relationship between the soldier and his country is partly, if not wholly, contractual. The consideration given by the soldier is service; the consideration given by the Country is pay, allowance, and pension. The Country owes the soldier a debt under an implied contract.... The same arguments might be used in favour of the widow and children of a member of the Forces when he dies or is killed. Reparation for his death must be paid to them, not because the country is grateful to the soldier or to them, but because the soldier, by having given service to his Country, has earned the payment of a debt to his widow and children.... The principle of debt, therefore, is the strongest part of the foundation of Pension Law .

The report states further on page 13:

SUBSISTENCE:

We now come to our third principle, namely, the provision of subsistence allowance. This principle, in reality, is the underlying principle of all from the point of view of the Country.

It will be seen that the principles of debt and subsistence are in close union. With regard to the soldier, his widow, and his children, the principle of debt predominates, but the scales of pension are calculated, at least partly, from the point of view providing subsistence. With regard to the persons for whom the Country will only provide subsistence in accordance with their needs, the principle of subsistence predominates, but the principle of debt is, nevertheless, present. The soldier has earned by his death, the payment of a debt of provision of subsistence for those for whom he would have had to provide an alimentary allowance were he alive

HISTORY

Regarding the scales of pension, the report states on page 16:

The soldier brings to the service of his Country a human machine with a certain ability or capacity. For convenience this machine may be taken to be the healthy mind and body of a man in the class of the untrained labourer. If he shows ability he will gain a higher rank, if not, he will remain a private. If he has not gained promotion he will return, upon discharge, to civil life with nothing more than a human machine, the healthy mind and the body he brought with him into the Service. If he is not incapacitated, he is as valuable to himself as he was previous to his enlistment. If, on the contrary, he is incapacitated, he has lost a certain degree of earning power, which is to be calculated only from the point of view of his earning power as a human machine in the market for untrained labour. The earning power of a man in the class of the untrained labourer is considered to be sufficient to provide decent comfort for himself or his family, that is to say, that standard of living which the average unskilled man can command for himself and his family.

It is significant that the original typewritten copy of this report read as follows:

The earning power of a man in the class of the untrained labourer is considered to be sufficient to provide decent comfort for himself and his family, that is to say, a little more than enough for subsistence .

The words "that is to say a little more than enough for subsistence" were struck out and replaced in handwriting with the words "that is to say that standard of living which the average unskilled man can command for himself and his family .

The Royal Commission on Pensions 1923-24, VI quoted the original version of this memorandum, with the following explanation:

When the Canadian Pensions Legislation was being framed, the introduction of this principle was discussed and was rejected for reasons which appear on the following extract from the memorandum prepared by those who had in charge the drafting of the Act".

HISTORY

This original version used the words "sufficient to provide decent comfort for himself and his family, that is to say, a little more than enough for subsistence". It is noteworthy, however, that the version which your Committee found in the files of the Canadian Pension Commission was amended to read: "That is to say that standard of living which the average unskilled man can command for himself and his family". These remarks are significant, inasmuch as they are quoted from the only document dealing with the genesis of pension law which was available in the files of the Pension Commission.

Colonel Belton, Chief Medical Adviser to the Board of Pension Commissioners, (formerly a member of the Pensions and Claims Board) made the following statement to the Special Committee on Soldiers' Pensions Regulations, on April 30th, 1918: 18

1918

The pensions are given because of the man's disability, his lessened ability to earn a livelihood in ordinary unskilled work, the ordinary labour market. That is interpreted to mean not the laborious work of a labouring man only, but any work of unskilled nature that the man might get that is open to unskilled men to take. To better explain this we use the phrase 'restriction in the choice of occupation'; if a man is restricted from undertaking any occupation of an unskilled nature there is a disability. The wider his restriction, the greater his disability. Disability then is the loss or lessening of some ability by the exercise of which the pensioner was wont to earn his livelihood, or might earn a livelihood, in the ordinary labour market.

It would appear, from the above statement of Colonel Belton, that the Board of Pension Commissioners continued to follow the same policy as that followed by the Pensions and Claims Board of the Department of Militia and Defence. (See first statement of Colonel Belton on page 486).

HISTORY

Mr. Kenneth Archibald, Legal Adviser to the Board of Pension Commissioners, confirmed the basis upon which pensions were granted in an exchange of comments on April 24th, 1918 with Mr. W.F. Nickle, M.P. for Kingston: 19

Mr. Nickle: Under our system the pension is determined without reference to a man's previous occupation or earning capacity, and only in respect to his physical ability .

Mr. Archibald: Yes, that is right. His physical fitness for employment in the general labour market. There is no doubt about it, that the estimation of disability in accordance with capacity to do work is a cause of a great deal of discrimination between one class of persons and another class. At the same time there is a very large number of persons enlisted who come within the caption of labour, although there are also many clerks and so on .

The Report to the House of Commons by the Special Committee on Pensions and Pension Regulations of 1919 recommended "the awarding of a more adequate pension, by bonus and otherwise, to disability and dependent pensioners".²⁰ The Report made no mention of the basis upon which such pensions were to be paid.

Lieut-Col. J.T.C. Thompson, Chairman, Board of Pension Commissioners, explained the formula for calculation of pension to the 1922 Parliamentary Committee in the following exchange with The Honourable H.M. Marler, Committee Chairman on April 20th, 1922.

Mr. Marler, Chairman: Would you inform the Committee the general basis you have of estimating the amount of pension a man should receive? You don't take into consideration the occupation of a man before he entered into the Service?

HISTORY

- Lieut-Col. Thompson: We just take him as a human machine .
- Mr. Marler: You estimate your basis of ordinary pension as to what an ordinary fit labourer could do to earn his living?
- Lieut-Col. Thompson: A normal man ?
- Mr. Marler: It has nothing to do with his station in life, or earning capacity?"
- Lieut-Col. Thompson: No .
- Mr. McKay: What about a man's status in the Army?"
- Lieut-Col. Thompson: All up to the red cap (Colonel) are the same, it varies from thereon".
- Mr. Caldwell: The general basis is an ordinary healthy man, it has nothing to do with his occupation or his profession at all ?
- Lieut-Col. Thompson: Nothing whatever .
- Mr. MacLaren: It is termed unskilled labour?"
- Lieut-Col. Thompson: I suppose one would call it unskilled labour. It is really a normal man. The way it is estimated really is to take the composite man and the composite occupations in life, and that he is disabled and incapacitated from earning a living' .

The 1922 Parliamentary Committee on Pensions, Soldiers' Insurance and Re-establishment in its report to the House of Commons under date of April 6, 1922 commented as follows: 22

A pension for a disability may be small or great, depending upon the extent of the disability from which the ex-soldier may be suffering. The disability may be an inability, or may be a prohibition - by the latter is meant the prohibition to do something by reason of medical advice. The extent of the disability also depends on evidence and medical advice, but in all cases every effort is made in favour of the ex-soldier, each individual case being separately studied, but it should be understood that the bases and the basic rate of all pension is taken on the basis of an unskilled labourer 100% efficient - that was the only common demoninator which thorough investigation has

HISTORY

found to be practicable in application and it therefore follows that the station in life of the ex-soldier or his earning capacity in spheres outside the common labour market are not considered.

The views expressed presumably by Mr. Archibald in the historic document entitled "Canadian Pensions and Proposed Bill with Remarks, 1917", concerning the basic principles regarding the scales of pension appear to indicate that the intent was that pension should be sufficient to provide a standard of living which the "average unskilled man can command for himself and his family".

The version of this principle cited by the Royal Commission on Pensions in 1923-24, (i.e., "sufficient to provide decent comfort for himself and his family, that is to say, a little more than enough for subsistence") appears to be a less generous interpretation.

A thorough search of the files of the Royal Commission on Pensions has failed to produce the version quoted by the Royal Commission and the only copy of this document which your Committee could locate was in the files of the Board of Pension Commissioners (now the Canadian Pension Commission). This was the amended version using the words "standard of living which the average unskilled man can command for himself and his family".

These versions qualify what is meant by "earning power of a man in the class of the untrained labourer". In the version quoted by the Royal Commission this is described as "little more than enough for subsistence". The amended version suggests that pension should be based on a figure which would be representative of the earnings which "the average unskilled man can command for himself and his family".

COMMITTEE RECOMMENDATION

(63) That disability pensions continue to be awarded on the basis of compensation for disability, which shall mean the loss or lessening of the power to will and to do any normal mental or physical act, with application of the following principles:

Pension
Basis

(a) The estimate of the extent of a disability should be based on instructions and a table of disabilities to be issued by the Pension Commission, and all such assessments be approved by the Pension Commission and/or the Pension Appeal Board.

Table of
Disabilities

(b) Assessments up to 100% should be based on the loss of earning capacity.

Earning
Capacity

(c) The amount for 100% pension should continue to be the earning power of a man in the class of the untrained labourer; as determined by the average wage for this type of employment in the Public Service of Canada.

Untrained
Labourer as
Standard

COMMENT

Your Committee was required to examine into the question of pension for multiple disabilities. (See Volume II, Part III Chapter 14.) In the view of your Committee, a proper assessment for multiple disabilities must essentially be based on the basic rate of pension. Accordingly, your Committee has found it necessary to examine into the basic rate as a background for study of the multiple disabilities problem.

The question of basic rate has been approached primarily in regard to its relationship to your Committee's proposal that assessments for multiple disabilities should be in excess of 100%. This study has been carried out with the object in mind that the views of your Committee should be consistent with the broad approach to pensions which has been established throughout the years. In this respect, your Committee considers that no change is necessary in the basis for assessment, and that the basis for determination of the amount represented by 100 percent pension should be modified only slightly. The basis for assessment, as will be explained later, has always followed the concept of indemnifying the pensioner for his actual physical loss, without relation to his pre-enlistment or post-discharge capabilities in the social or economic sense. The formula upon which the extent of disability has been translated into dollars has used the average earnings in the unskilled labour market to represent 100 percent disability pension.

Although this yardstick is well established and sound, some difficulty has been experienced in its application. Your Committee believes that this difficulty will be met if the criterion for 100 percent pension is that of the unskilled classified employee in the Public Service of Canada.

CONTENT

It is felt that this would obviate the difficulty currently faced in trying to determine the quantum of dollars represented by earnings in the unskilled labour market.

The use of the unskilled labour market as a basis for determination of the quantum of pension is presumably based on information given the 1919 Parliamentary Committee which studied the draft of the original Pension Act. The key words are: *

The earning power of the man in the class of the untrained labourer will be sufficient to provide decent comfort for himself and his family, that is to say, the standard of living which the average unskilled man can command for himself and his family.

This basis was presumably workable in the era which preceded Canada's industrialization. There is today no specific classification of untrained labour. Hence, it is difficult to arrive at a figure for average earnings in this category. Moreover, wages in the common labour field vary widely in different parts of Canada, further complicating the task of determining a satisfactory earning range for this type of employment.

Your Committee notes that, in submissions to the Government in recent years, the Royal Canadian Legion and other veterans groups have recommended that pension be based on the earnings of various classes of untrained employee in the Federal public service. The advantages of this have been referred to by these groups and are obvious. Firstly, it can be expected that the wages for this type of employment will keep pace with periodic adjustments in wages generally. Secondly, wages in the Federal public service do not vary significantly in different geographic locations. Thirdly, it will not interfere in any significant way with accepted standards and approaches.

* See page 488 hereof

COMMENT

It should be feasible to relate the earnings in the unskilled labour market to the wages of a similar type of employment in the Public Service of Canada. This retains the unskilled labour formula, and provides that the criterion for establishing the quantum of earnings in this category would become that of the wages paid for this type of labour in Federal Government employment.

Your Committee considers, in this respect, that no specific occupation should be chosen as the indicator. This is to avoid the situation which would arise if one job classification were to be selected and, if through a change in circumstance, that particular occupation were re-graded. It should suffice to take a sampling of the wages in several of the untrained labouring jobs under the Civil Service Commission and arrive at a composite figure which would be acceptable as the average wage for that group.

It is appreciated that it is not practicable to equate the veteran with the civil servant financially in all respects. Each has some fringe benefits and these do not completely parallel each other. The problem faced by each and the reasons for payment by the Government are not the same. If there is any question of one or the other being given preference, there should be no hesitation in weighing the scales in favour of the pensioner. Your Committee assumes, therefore, that the basic rate will continue to relate only to the single pensioner without dependants and everything set out herein proceeds on this premise.

Definition of physical damage concept: There are two main concepts under which pension is assessed in various countries throughout the world. These concepts may be described in general terms as follows:

COMMENT

- (1) The physical damage concept: A value, usually expressed as a percentage, is placed on a pensioner's intrinsic physical loss compared with an able bodied person.
- (2) The loss of earning capacity concept: The actual loss of earning capacity of the disabled person is determined and pension is paid accordingly.

A general description of these concepts follows:

Physical damage: This pre-supposes an objective measurement of organic or functional disorder compared with the condition of an average healthy person, without reference to personal factors such as the previous occupation or the varying degree of effect of the same disability upon one person compared with another. This concept ensures uniformity of assessment and full utilization of the best medical knowledge available.

Loss of Earning Capacity: This requires the measurement of physical or mental impairment on the basis of the economic loss of each individual. It has the result of providing different degrees of disablement to persons suffering from the same injury where such persons, due to education, economic conditions or psychological adjustment, might possess different earning capacities. This system requires investigation of social and economic conditions, as well as medical analysis.

A system based on loss of earning capacity may imply a sense of unfairness for pensioners who could claim loss of some special skill or functions. The classic example, often quoted, is that of the right handed violinist who loses the little finger of his left hand. If this same violinist were to lose a foot, however, he would be entitled to no compensation if the system were based solely on loss of earning capacity. Hence, the most equitable pension program will follow the principle of assessment of

COMMENT

the actual degree of disability, and will explicitly prohibit the modification of any rating on the basis of pre-enlistment qualifications or individual success in overcoming economic handicap.

The concept of loss of earning capacity is quite workable in case of workmens compensation, due to the fact that the loss of earning capacity can be measured on the basis of the workman's earnings immediately prior to the injury. Your Committee considers that the system would be fraught with complication if an attempt were made to utilize it for war pensions in Canada. There would be no realistic means by which earning capacity prior to enlistment could be determined. Furthermore, any suggestion that a pension should be based on a man's ability to earn his living would serve to penalize the pensioner who, after rehabilitation, is able to overcome his physical limitations.

The system which has been developed under the Pension Act in Canada involves use of both concepts. Physical or mental damage is measured in exact terms and a percentage of assessment is approved in each individual case. The monetary value of this percentage is based on the formula that 100% pension equals a complete loss of earning power in the unskilled labour market. Hence this system provides for indemnification on the basis of actual physical or mental loss.

It makes use also of the concept of loss of earning capacity, but only to the extent that every pensioner is considered to be able-bodied upon enlistment (except for acknowledged pre-enlistment conditions) and he is entitled to compensation for any physical or mental damage attributable to service, on the basis that all service personnel are evaluated on the ability to earn their living in the class of the untrained labourer.

COMMENT

Economic Factors: Your Committee is aware that all funds paid under the Pension Act are provided by the Canadian taxpayer. The pensioner, like all others in the community, should accept the fact that tax monies for distribution by the government are dependent upon economic and fiscal factors. It is not suggested herein that the hands of Parliament should in any way be tied, or that government should be irrevocably committed to any policy that would interfere with its overall responsibility to all segments of the community.

Your Committee is aware also that those who administer pension legislation have a continuing responsibility to the taxpayer to see that monies voted are disbursed with care, as well as understanding, and in a spirit that gives the veteran his just due.

REFERENCES

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4. Ibid, Page I-41.
5. Ibid, Page J-3.
6. Ibid, Page K-16.
7. Royal Canadian Legion letter, dated Sept. 28, 1965 to Committee Secretary.
8. Royal Canadian Legion Brief to the Prime Minister of Canada, November 25, 1965, Page 9.
9. Proceedings of Committee Sessions, Volume IV, Page Q-3.
10. Proceedings of Committee Sessions, Volume V, Page Z-4.
11. Ibid, Page W-4.
12. Proceedings, Special Committee of Pensions for Disabled Soldiers, 1916, Appendix 4, Page 3.
13. Ibid, Page 43.
14. Report of Pensions Granted to Member of Canadian Expeditionary Forces, 1916.
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16. Canadian Pension Commission subject file CPC 117-7-1, Volume B-1.
17. Report of Royal Commission on Pensions and Re-establishment, 1923-24 Sessional Paper 203, Page 44.
18. Proceedings, Special Committee on Soldiers' Pension Regulations, 1918, Appendix 2, Page 86.
19. Proceedings, Special Committee on Pensions, Soldiers' Insurance and Re-establishment, 1918, Appendix 2, Page 14.
20. Report of Special Committee on Pensions and Pensions Regulations, 1919, Page IV.
21. Report of Special Committee on Pensions and Pensions Regulations, 1922, Appendix 2, Page 61.
22. Report of Special Committee on Pensions, Soldiers' Insurance and Re-establishment, 1922, Appendix 2, Page XXIII.

CHAPTER 14

MULTIPLE DISABILITIESGENERAL

For the purpose of this Report, the term "multiple disability" may be considered to mean the full extent of disability existing in any one person as follows:

- (1) Paraplegia or quadraplegia;
- (2) Total blindness;
- (3) Two or more amputations, where the assessment for each amputation, under the Pension Commission's Table of Disabilities, added together, exceeds 100%; and
- (4) Any other disability or combination of disabilities wherein the pensioner experiences medical and other problems in a substantial degree as explained later in this Report.

The provision for assessment of the degree of a disability is set out in Section 28(1)(2) of the Pension Act as follows:

- 28(1) Subject to the provisions of Section 13, pensions for disabilities shall, except as provided in subsection (3), be awarded or continued in accordance with the extent of the disability resulting from injury or disease or aggravation thereof as the case may be, of the applicant or pensioner.
- (2) The estimate of the extent of a disability shall be based on the Instructions and a Table of Disabilities to be made by the Commission for the guidance of physicians and surgeons making medical examinations for pension purposes.

The provisions of Section 13 to which Section 28(1) has reference, in so far as disability pensions are concerned, are found in Section 13 (1)(a) which reads as follows:

- 13(1)(a) Pensions shall be awarded in accordance with the rates set out in Schedule A to or in respect of members of the forces when the injury or disease or aggravation thereof resulting in the disability in respect of which the application for pension is made was attributable to or was incurred during such military service.

General

It will be noted that Section 13(1)(a) relates to Schedule A of the Act, which sets out the amount of pension in 20 classifications ranging from 5% to 100%.

The other sections of the Pension Act which relate to the matter of assessment are 17 and 28(4) which read as follows:

17 The occupation or income or condition in life of a person previous to his becoming a member of the forces does not in any way affect the amount of pension awarded to or in respect of him.

28(4) No deduction shall be made from the pension of any member of the forces owing to his having undertaken work or perfected himself in some form of industry.

The basis for calculation of 100% pension is the income potential of an able bodied man in the unskilled labour market. The relevant sections of the Pension Act of 1919, with annotations prepared in the form of a memorandum by the Legal Adviser to the Board of Pension Commissioners dated July 1, 1919, * are set out hereunder:

15 The occupation, or income, or condition in life of a person previous to his becoming a member of the Forces shall not in any way affect the amount of pension to or in respect of him.

Annotation: This Section consecrates the principle that the pre-war circumstances of the members of the Forces concerned are not to be considered in estimating pension. The fact that a violinist has lost the fingers of his left hand will not cause him to receive a larger pension than that awarded to a bookkeeper or a labourer with the same disability. It is the extent of the disability alone which is to be taken in to account; not the economic loss.

25(4) No deduction shall be made from the pension of any member of the Forces owing to his having undertaken work or perfected himself in some form of industry.

Pension Act and Annotations, July 1919.

General

Annotation: This Section replaces Section 9 of the Pension Regulations. Pension is payable for the extent of the disability no matter what the subsequent earnings of the pensioner may be.

- 25(1) Pensions for disabilities shall be awarded or continued in accordance with the extent of the disability of the applicant or pensioner.

Annotation: This Section should be read in conjunction with Sections 15 and 25(4). These sections consecrate the principle that neither the pre-enlistment nor post-war financial condition or the particulars of a man shall affect the amount of his pension. The percentage of incapacity to perform work in the general labour market caused by the wound, injury or disease is the only consideration taken into account in estimating the degree of pensionability.

- 2(2) "Disability" means a wound, injury or disease.

Annotation: This definition avoids the repetition of the words "wound, injury or disease" in the various sections of the Act. When the words "extent of the disability" are used they may be interpreted as meaning the percentage of incapacity to perform work in the general labour market resulting from wounds, injury or disease.

An amendment to the definition of disability was enacted on July 1st, 1920¹ as follows:

- 1(g) "Disability" means the loss or lessening of the power to will and to do any normal mental or physical act.

The sections of the original act of 1919, together with the amendment of 1920, have remained unchanged throughout the years and are now found in the existing Sections 28(1) and (2), 17 and 28(4) quoted above. It would appear that the foregoing references to the 1919 Act, read in conjunction with the information given to Parliamentary Committees between 1916 and 1922, form the basis of the concept that pension is paid on the pensioner's capacity to perform work in the unskilled labour market.

General

In order to determine the basis for the upper limit of 100% now imposed in our pension administration, it is necessary to consider that, although Section 28(1) states generally that pension shall be awarded in accordance with the extent of the disability, this principle is subject to the provision of Section 13(1)(a) which states that pension shall be awarded in accordance with Schedule A of the Act. Under the existing Act, Schedule A sets a limit of \$2,760. at single rates for 100% pension for Captain (Naval), Colonel (Army), Group Captain (Air) and all ranks and ratings below.

Further explanation of the basis of this limitation of 100% is found in the Table of Disabilities,² issued as a policy guide by the Pension Commission, from which the following paragraphs are quoted:

11. Where more than one pensionable disability exists, the combined assessment will be based on the combined disablement as a whole, but in no case will the combined assessment exceed 100%.

When the separate pensionable disabilities are the result of wound, injury or disease and confined to either the extremities, the eyes, the ears or vital organs, and the disabilities have entirely independent functional effect, extreme care will be exercised in assessing each disability separately, and the composite assessment will be the arithmetical sum total.

(a) Loss of Right Thigh (mid third)	70%	
Loss of Left Eye	40%	
Combined assessment		100%
(b) Loss of Left Hand	60%	
Combined assessment		100%

General

(c) Varicose Veins, bilateral	30%	
G.S.W. Left Arm with Fracture of Humerus	10%	
Nerve Deafness	20%	
Combined assessment		60%

When the functional effects of the pensionable disabilities do overlap, the combined assessment after inspection of the Table, will be based on the disablement as a whole. (Generally speaking, such overlapping is usually found in separate disabilities of the vital organs).

Where there is damage to paired organs, the arithmetical sum of the separate assessment may fall short of the true degree of entire disablement. In such cases, after inspection of the Table, the composite assessment is to be made at a percentage which represents a true estimate of the disablement as a whole, e.g., the loss of sight of both eyes is more than twice as serious as the loss of either, and again, a double amputation may be more than twice as serious as a single one at the same level.

Regardless of the total assessment, the Pension Commission has interpreted Schedule "A" as limiting the maximum payment to the amount set out for Class 1, which at current rates is \$2,760. per annum.

REPRESENTATIONS AND EVIDENCE

It is apparent, from the representations and other information submitted to the Committee, that the limitation of 100% pension for conditions of extreme physical incapacity has been a serious issue with veterans organizations for many years.

Multiple Disabilities Group

The organizations comprising the "Multiple Disability Casualties Group" of the National Council of Veterans Associations in Canada submitted a brief to your Committee under Date of January 19th, 1966. This group comprised representatives of the following organizations:

The Canadian Paraplegic Association

The Sir Arthur Pearson Association of War Blinded

The War Amputations of Canada

The War Pensioners of Canada

The main contention in the brief was that, whereas under the existing application of the Act compensation for a single disability can be assessed with reasonable fairness, the effect of the 100% limitation is that the multiple disability case cannot be compensated in accordance with the full extent of the disabling condition or conditions.

Multiple Amputation

The first example cited in the brief was that of the multiple amputee. Your Committee considers that this case serves to illustrate the problem and it is quoted hereunder: 3

REPRESENTATIONS AND EVIDENCE

Multiple Amputation

The discrepancy between assessable disability and the compensation at present being awarded is clearly evident in the case of a multiple amputee. While the Commission can assess each amputation separately and arrive at an arithmetical total considerably in excess of 100%, it has not approved for payment any combined assessment that exceeds that arbitrary ceiling. This would seem to imply that a 100% assessment is the same as a total disability. A 100% assessment may indicate a degree of disability which disqualifies a pensioner from competing in the ordinary labour market, but a human being who is totally disabled would be unable to move, think, talk or function in any way.

In the case of a double leg amputation, in the upper third of the thigh, the Commission pays compensation at the rate of 80% for one amputation and of only 20% for the other. This is completely unjustifiable. The loss of a second leg above the knee should carry a second assessment of 80%. In fact the loss of two legs is more than twice as serious as the loss of one leg and the arithmetical total of 160% in this instance falls short of the true degree and extent of the disability.

The brief cited another example; that of a pensioner who has suffered the loss of his right leg above the knee and part of the left foot, giving a total assessment under the Table of Disabilities of 100%. This is compared with a pensioner who has suffered the loss of his right leg above the knee and his left arm above the elbow, such losses being assessed under the Table of Disabilities at 70% and 80% respectively for a combined assessment of 150%, but paid at only 100% because of the limitation imposed in the present interpretation of the Act.

This case was set out as an illustration, which is shown as Appendix "A" to this Sector of the Report.

REPRESENTATIONS AND EVIDENCE

Paraplegia

The Brief provided information in respect of the condition of paraplegia and proposed an assessment made up as follows: ⁴

Impairment of Locomotion (loss of use of two legs plus additional factor of 25% for the loss of use of paired organs)	185%
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Loss of Normal control of Body Functions

(1) Bowel and Bladder	60%
(2) Sexual Function	40%

Threat to Existence

Involvement	10%
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Brief which describes the impairment resulting from paraplegia is quoted hereunder: ⁵

Locomotion of the paraplegic is limited for all practical purposes to the wheelchair with consequent restriction to level areas and to short distances. Wherever steps are involved he must be carried. He is barred by narrow doors and passages and must constantly rearrange his comings and goings to avoid such barriers.

The loss of normal control of bowel and bladder function restricts and frustrates the paraplegic in all of his activities. His living arrangements, his employment and his recreational pursuits are all affected by this problem.

He requires a much higher fluid intake than the average person in order to maintain health. His loss of mobility and of organic control, however, make this regime incompatible with a normal life.

REPRESENTATIONS AND EVIDENCE

Kidney involvement presents a constant threat to life, a shortening of life expectancy, and is a cause of recurrent illness. Statistically, renal failure is the leading cause of death among paraplegics.

Loss of sensation leaves the paraplegic particularly susceptible to pressure sores and to injury from burns, bruises, etc., because the body's normal reaction of pain is absent. Loss of sensation may also mask abdominal pain or discomfort which is the normal warning of internal illness.

The absence of normal sensation is frequently replaced by distorted sensations and abnormal pain which are often of sufficient magnitude to be disabling in themselves.

Taken together, the above maladies comprise a complex combination of disabilities which seriously limit the paraplegic in most normal activities.

The illustration comparing the disability of paraplegia with an amputee is set out in Appendix "B" to this Section.

Blindness

The condition of blindness was described in the brief as follows: 6

Blindness

The loss of use of both eyes imposes a severe limitation on most human activities. In the case of total blindness, and using the double leg amputation as the basis for comparison, we recommend a total assessment of 365%, having regard to the following aspects of the disability:

Impairment of Locomotion:

Due to loss of visual guidance	100%
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Impairment of use of the Upper Extremities:

Due to loss of visual guidance	100%
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REPRESENTATIONS AND EVIDENCE

Impairment of Communication:

Due to loss of sight and the ability
to receive visual information 100%

Due to impaired ability to write 15%

Additional factor for loss of use of
paired organs 50%

Total Assessment 365%

The difficulties faced by the blind person without useful guiding vision are formidable indeed. In terms of locomotion he is dependent upon guidance from a sighted person for any mobility beyond a known environment. He cannot operate an automobile nor can he safely use public transportation without assistance.

Impairment of the use of arms and hands restricts the blind person's employability, and his participation in most activities of ordinary life. His normal dexterity is sharply curtailed without vision to guide it.

In communication the most serious aspect is the loss of ability to receive information by reading or through visual indication or through hand and facial gestures. This ability is indispensable to normal activities and is taken for granted by sighted persons. Its loss seriously limits the blind person's employment opportunities and his participation in normal recreational pursuits. An illustration comparing disabilities of the blind and the amputee will be found in Appendix "C".

Although the brief dealt mainly with the clearly-defined disabilities of amputation, paraplegia and blindness, it was mentioned that other multiple disabilities could exist in which the arithmetical total of the assessments exceeds 100%. The recommendation was made that, in such cases, a re-assessment of the disability at the actual arithmetical total should be made, and pension be paid accordingly.

REPRESENTATIONS AND EVIDENCE

The brief stated that the total number of seriously disabled in Canada whose true disability required an assessment in excess of 100% was not large. The following figures were given: 7

Multiple Amputations

Double leg	130	
Double arm	13	
One leg; one arm	26	
Triple	4	
Quadruple	<u>1</u>	
Total		174

War Blindness

Total Blindness	42	
Light perception, but no useful vision	21	
Total	<u>—</u>	63

Paraplegia

Paraplegics	170	
Quadruplegics	<u>13</u>	
Total		183

The Multiple Disabilities group suggested that, for the purposes of simplified assessment, it would be possible to arrive at four distinct categories of disability. The group proposed that the existing basic rate of \$200.00 per month be used for compensation up to 100%, and that a half-rate of \$100.00 per month for each additional 100 percentage points be used for assessments in excess of 100%.

The table proposed by the Multiple Disabilities group follows: 8

REPRESENTATIONS AND EVIDENCE

<u>CLASS</u>	<u>EXAMPLE</u>	<u>SUGGESTED ASSESSMENT</u>	<u>SIMPLIFIED ASSESSMENT TO NEAREST 100%</u>	<u>COMPENSATION AT EXISTING \$200 BASIC RATE (PLUS HALF RATE FOR ADDITIONAL DISABILITIES)</u>
A	Amputation, (Double A.K.)	185%		
	Amputation, (Double arm)	200%	200%	\$300.00
	Blind (Guiding Vision)	185%		
B	Amputation (Triple)	290%	300%	\$400.00
C	Amputation (Quadraplegic)	385%		
	Blind (Total)	365%	400%	\$500.00
	Paraplegic	365%		
D	Quadriplegic	595%	600%	\$700.00

NOTE: The half-rate for additional disabilities is suggested in order that the present medical assessments where they exist can be used while establishing some limitation on the maximum compensation payable.

The brief suggested that the Pension Act should be amended to provide allowances in excess of the 100% rate as compensation for anatomical loss or loss of use of extremities, paraplegia, quadraplegia or blindness. It urged that pension up to the 100% ceiling be based on the extent of disability as related to earnings in the unskilled labour market, and that any disability assessed in excess of 100% be compensated in some form of supplementary payment.

Mr. G. C. Langford, Q.C., Managing Director of the Canadian Paraplegic Association and Chairman of the Multiple Disabilities group representative provided information in respect to compensation for multiple disabilities under the United States Veterans Administration. Mr. Langford quoted Dr.

REPRESENTATIONS AND EVIDENCE

Title 38 of the United States "Veterans Benefits" Code, stating that he did not have the latest rates as they had been revised effective December 1st, 1965.

Your Committee obtained these rates direct from the Veterans Administration, Department of Veterans Benefits, Washington, D.C. which, at July 1st, 1966, were as follows:

Bilateral above knee amputee. The monthly rate of compensation under the U.S. Code Title 38, Section 314M for a single veteran from a service connected disability is \$450.

(Canadian rate \$359. monthly) *

Paraplegia - Monthly rate of compensation under the U.S. Code Title 38, Section 314 O & R for a single veteran is \$650.

(Canadian rate \$459. monthly) *

Anatomical loss of both eyes - The monthly rate of compensation under the U.S. Code Title 38, Section 314N for a single veteran is \$525.

(Canadian rate \$438. monthly) **

The Multiple Disabilities delegation brought to the attention of your Committee information in respect of supplementary benefits for the seriously disabled in the United States, including a \$1,600. grant for the purchase of an automobile and a \$10,000. grant, or one half the cost whichever is the lesser, to purchase a house.

The delegation stated that the principle of paying special allowances to the seriously disabled is recognized in other countries. The relevant quote, given by Mr. S.J. Alderdice representing the War Amputations of Canada, follows: 2

*Canadian rate includes disability pension, attendance and clothing allowances.

**Canadian rate includes disability pension and attendance allowance.

REIMBURSEMENTS AND EXPENSES

This is the principle, and this principle exists in many countries today, in that these countries recognize the fact that the seriously disabled pensioner, or ex-service person, should be paid a special award, or what we call a super pension, in addition to the basic or the ordinary hundred percent pension as it now stands.

In addition to this so-called super pension, it is recognized that these people require some assistance in order to meet the daily requirements in their day-to-day living. This has nothing to do whatsoever with the pension which is paid to them or the super pension of which we speak. Ken has covered this pretty well in his talk of the United States, but just to review it again we can mention that the United States Government pays a total disability pension and provides special statutory awards for an anatomical loss of a limb or limbs to the extent of one hundred percent. A pensioner who has suffered loss of both feet or hands can receive additional pension awards of up to two hundred dollars, making a total pension of four hundred and fifty dollars.

In addition a constant attendance allowance is paid, which in the case of a double-amputee would be two hundred dollars per month.

Now we might mention at this point, we are not really concerned about the dollars and cents. We are only concerned about this very principle, that the person who is seriously disabled is entitled to receive a super pension and also attendance allowance in addition thereto.

Mr. Alderdice then gave information concerning the system used in a number of countries as follows: ¹⁰

The United Kingdom - The Government pays a basic rate of 100% disablement. In addition an unemployment supplement is paid to pensioners who are unemployed because of war disablement. Attendance allowance is paid where the assessment is 80% or more.

REPRESENTATIONS AND EVIDENCE

Germany - A fixed pension rate is paid for total incapacity. Additional compensation is granted to the seriously disabled. Also attendance allowance is paid where the physical handicap is such that the pensioner requires special treatment.

Austria - A supplementary pension is provided for the seriously disabled; attendance allowance is available if the pensioner depends on the help of another person in order to perform essential acts of life.

New Zealand - The seriously disabled receive extra compensation by means of statutory awards under the New Zealand War Pensions Act. This award is paid to the bedridden or to those who are seriously restricted in their social and daily activities; attendance allowance is paid where the services of attendance are indispensable.

France - A form of additional pension is paid to amputees where the diagnostic prescription carries an assessment in excess of the normal; attendance allowance is paid where the aid of a third person is required.

Yugoslavia - The legislation provides a supplementary pension in the form of a higher than 100% rate for the seriously disabled; attendance allowance is paid.

Australia - Special indemnification is available for multiple amputations over and above the pension paid for other forms of disabilities; attendance allowance is also available.

Belgium - Statutory awards are paid to amputees in addition to the basic disability available to all disabled; attendance allowance is paid.

The four Associations represented in this Multiple Disabilities group submitted separate briefs, independent of the brief which was submitted jointly. Three of these briefs dealt in part with the question of multiple disabilities. This additional information was helpful to the Committee and is recorded below.

REPRESENTATIONS AND EVIDENCECanadian Paraplegic Association

The Canadian Paraplegic Association brief, received by the Committee under date of January 18th, 1966, dealt in detail with the difficulty of paraplegia. The brief explained the social and psychological aspects of this condition, as well as the medical complications.

The brief touched on the question of premature aging and stated as follows: ¹¹

As stated earlier, over 80% of the spinal injury casualties, arising out of the service during World War I, died during the first year following injury. Consequently the spinal injuries veterans of World War II comprise the first sizeable group of young men, previously in good health and physical condition, which can be used to observe and study the affects of this disability in terms of premature aging. The deterioration in bone structure, musculature, neurological system and general loss of sense of health, well-being and energy is very real to the older paraplegic. There is little doubt that such premature aging and deterioration takes place earlier in the life of a paraplegic or quadraplegic.

The brief suggested that the life expectancy of paraplegics, while dramatically improved from the experience of the era of World War I, is still much below the average for the general population. In this regard the Association representatives filed a medical paper, published in the Canadian Medical Association Journal under date of July 8, 1961, entitled "Late Causes of Death and Life Expectancy in Paraplegia". ¹² This paper stated that "the chief impression created by this disorder (paraplegia) was its high mortality".

The paper showed that.

REPRESENTATIONS AND EVIDENCE

- (1) The mortality rate for paraplegics is $1 \frac{3}{4}$ times as high as that for the general population. In the various age groups this mortality rate for paraplegics ranged from 7 times as great for paraplegics at 25 years of age to $1 \frac{3}{4}$ times as great at 65 years of age.
- (2) For the first $5 \frac{1}{2}$ years after onset of paralysis, the percentage mortality for paraplegics is 356% of the total population mortality.
- (3) The survival duration (i.e., the number of years to which 50% of a closed group of lives will survive) for persons suffering onset of paralysis at age 20 showed an expectation of life for paraplegics of a remaining 35 years (i.e., general male population of 49.5 years (i.e., to age 69.5). This indicated a shortening of the life span for paraplegics with onset of paralysis at age 20 of 14.5 years compared with the general population.

The Association filed also a medical paper titled "The Management of Paraplegia" which was printed in the Manitoba Medical Review, Volume 43, No. 7, August - September, 1963, and written by Doctor A.T. Jousse. 13 The points in this article which appear relevant to the question of pension are:

- (1) Pressure sores are a constant problem to the paraplegic and very often compound the severity of the condition.
- (2) Special urological care is necessary at all times. This often requires the use of an in-lying catheter or intermittent catheterization, both of which cause the patient considerable discomfort.
- (3) The paraplegic has a high mortality rate and the cause of death includes the following:

Renal Failure	Tuberculosis
Cardio-Vascular Disease	Peritonitis
Genital-Urinary Tract	Pulmonary Edema
Pneumonia	Accidental Death
Infected Sores	Suicide
Neoplasm	Malnutrition, Inanition
Cardio-Vascular Accident	

REPRESENTATIONS AND EVIDENCE

(4) Other problems faced by the paraplegic include:

- (a) Fixed deformity of the joints of the lower and upper extremities.
- (b) Pain and abnormal sensory experiences, complicated by depression.
- (c) Autonomic disturbances manifested by excessive perspiration, "goose flesh" above the lesion, dilation of the pupils, slowing of the pulse, elevation of blood pressure and at times a severe pounding headache.
- (d) Respiratory complications including severe coughing.
- (e) Abdominal problems arising from distention of the bowel by impacted faeces and gas.
- (f) Fracture of the long bones due to decalcification, thus making mobility a calculated risk.
- (g) Spasticity of the skeletal muscles, often known as mass reflex. This spasticity can render a patient's life almost unendurable because of the unremitting annoyance of the spasms. It may also produce extreme discomfort. The condition cannot be relieved by drugs.

Dr. Jousse appeared in person before your Committee in order to provide first hand information regarding the medical problems of paraplegia. He made particular reference to the "sensory phenomena" in the paraplegic which creates a frequent feeling of being unwell.¹⁴ Doctor Jousse explained this as part of the burden which paraplegics carry with them through life. He commented also of the fact that paraplegics must carry around what he termed "a lot of relatively useless structure". In this regard he was referring to the extremities and organs which have been rendered useless by the condition of paraplegia but which exist physically.

REPRESENTATIONS AND EVIDENCE

Dr. Jousse brought to the Committee's attention the fact that paraplegics are sometimes able to cope with their problems in earlier life, but that their difficulties become much greater when they reach their 40's and 50's.

The Sir Arthur Pearson Association of War Blinded

The brief of the Sir Arthur Pearson Association of War Blinded drew attention to the anomalous situation where, under the system of rating used by the Pension Commission, an assessment of 100% was given to both the totally blinded and also to blind persons with some guiding vision. This situation was due to the fact that the Pension Commission considered the disability of blindness which left the veteran with some guiding vision was severe enough to warrant a rating of 100%, but, because of what the Association termed the "mythical ceiling of 100%", no provision could be made to provide additional pension for more severe conditions of blindness, including the totally blind.

The War Amputations of Canada

The separate brief filed by the War Amputations of Canada dealt with a distinction between 100% assessment and 100% disability. The relevant quote follows: ¹⁵

This would seem to imply that 100% assessment is in effect, 100% disability. This could not be correct, as a human being classified as 100% disabled would be unable to move, think, talk, or function in any way.

REPRESENTATIONS AND EVIDENCE

The Amputations Association suggested that the most feasible means of awarding proper compensation would be for the Government to pay the combined assessment, regardless of whether or not such exceeded 100%, and proposed a "point" system as follows: ¹⁶

This Association contends that the problem of limitation of pension for those persons with total assessment in excess of 100% has arisen from the term "percent" which implies a ceiling of the limit "100". If the term "points" were substituted for "percent" there would be no such false limitation. Hence, under the present pension scale, (i.e., 100% equals \$2400. per annum) it would mean \$24. per point yearly. Therefore, double leg above the knee amputee would have an arithmetical total of 140 points, giving him a total disability pension of \$3360. at single rates.

The War Amputations of Canada delegation informed the Committee that there was no particular preference in the Association for the suggest "point system" as being superior to the proposed method outlined in the Multiple Disabilities Brief. ¹⁷

L'Association du 22ième Inc.

L'Association du 22ième Inc. recommended that some form of additional pension be devised to compensate those in the seriously disabled classes such as multiple amputations, the paraplegics and the blind. The relevant portions of their brief are quoted hereunder: ¹⁸

The present pension rates have a ceiling of 100% which provides a pension of only \$2400. annually. This means that a small number of veterans who comprise the most seriously disabled of the men who served Canada in time of war, are being deprived of what might be termed "additional pension" by reason of this 100% ceiling.

REPRESENTATIONS AND EVIDENCE

This Association knows of many pensioners who are assessed at 100%, but who have no obvious disabilities, and are able to perform in a normal manner. There is no suggestion that these veterans are not entitled to the 100% assessment by reason of wartime injury or disablement. We do contend however, that the ceiling of 100% represents a very serious inequity, in so far as the multiple amputee, the blind, and the paraplegic are concerned. This has been a long-felt need in our pension legislation in Canada. It is understood that provision is made for extra compensation for such groups in most other countries. It is time that Canada recognized this requirement and adjusted her pension laws accordingly so that the Pension Commission could pay "additional" where the medical assessment of a pensioner's disabilities is greater than 100%.

Special recognition should be given to the following groups:

Amputation cases: The Pension Commission provides an assessment of 70% for a single leg amputation mid-thigh. If the veteran has been unfortunate to suffer the amputation of his second leg at the mid-thigh, the Commission can compensate him only up to the extent of 30% in view of the 100% ceiling. It would appear only reasonable that he should be entitled to 70% pension for each leg, perhaps with some additional pension arising out of the fact that he has no legs for mobility.

The War-Blinded: No pension payment could compensate for the severe disability of blindness. It is considered, however, that this disability should be rated far in excess of the 100% ceiling.

Paraplegics: Those veterans who are confined to a wheel chair and who have lost total functions of the bowel, bladder, sexual functions, and suffer from general ill health should be compensated at the highest possible rate this country could afford.

National Council of Veteran Associations in Canada

The National Council, in its brief presented to the Committee under date of January 21st, 1966, recommended as follows: 19

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That in the case of those war disabled who have sustained multiple disabilities, war disability compensation, i.e. pension, should be paid in accordance with the true extent of the disabilities and in conformity with the express wishes of Parliament as set out in the Pension Act.

Comment: This recommendation deals with what is, in our opinion the most serious discrepancy in Canada's pension legislation. That small group of war casualties who have suffered most from war service is the very group which is least adequately provided for under the Pension Act. There are a few hundred multiple amputees, blind and paraplegics who have incurred disabilities totalling several times that degree of disability that is required to qualify for maximum compensation under the Act, yet they receive compensation for only a small portion of their disabilities.

Because of the importance of this matter a separate brief dealing with multiple disabilities has been filed under date of November 3rd, 1965. We earnestly commend this brief to your attention.

The Army, Navy and Air Force Veterans in Canada

This Association endorsed the brief submitted by the Multiple Disability Casualties group. Your Committee considers that the following discussion between Mr. J.C. Lundberg, President of the Army, Navy and Air Force Veterans, and the Committee Chairman is pertinent: 20

Mr. Justice Woods: We understand your basic position is that you are in full accord with their representation. Now is there anything else you want to add?

Mr. Lundberg: No sir, only the fact that they are so few involved in this thing in the Multiple Disabilities, we feel something should be done for the really seriously disabled groups. We feel some consideration should be given to help the seriously disabled groups.

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Mr. Justice Woods: What is the significance of them being a small group? Does it mean that it is not much of an economic problem to deal with them?

Mr. Lundberg: This is quite true sir, having regard, of course, that the span of life, too, is considerably shortened and the amount of veterans involved is not great enough that would injure the treasury in any way to give these men special consideration.

Royal Canadian Legion

The Royal Canadian Legion did not refer to the matter of multiple disabilities in its brief dated December 6th, 1965, presented to the Committee under date of January 31st, 1966. The Legion did, however, approve a Resolution on this subject at its Dominion Convention on April 17, 1966. Mr. Donald M. Thompson, Dominion Secretary of the Legion, forwarded a copy of this Resolution to your Committee under date of May 4, 1966. The Resolution reads as follows:

WHEREAS the Pension Act provides that pension will be awarded for disabilities in accordance with the extent of "the" disability; and

WHEREAS the Pension Commission has interpreted the Act to limit the granting of awards at a rate not in excess of 100% pension; and

WHEREAS there are a number of pensioners who suffer from multiple pensionable conditions totalling individually more than 100%; and

WHEREAS many of this group are severely handicapped because of the loss of two or more limbs combined with additional disabilities; and

WHEREAS representations have been presented on several occasions on behalf of these pensioners seeking recognition of their over-all assessment;

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THEREFORE BE IT RESOLVED that the Royal Canadian Legion recommends that the Government take the necessary steps to provide more adequate awards for all disability pensioners whose total assessment exceeds 100%; and

BE IT FURTHER RESOLVED that the above recommended awards be considered as a responsibility of the citizens of Canada as a whole and not taken from funds required to provide the necessary increase in the basic rate for all pensioners.

John R. Matheson, M.P., Q.C.

In his presentation to the Committee under date of March 3, 1966 Mr. Matheson made a special representation on behalf of the group of pensioners he termed "seriously injured".²¹ He cited a number of actual cases with whom he had been in touch, and provided specific information regarding the seriousness of their disability, and their additional costs in connection with housing, transportation and other requirements.

Mr. Matheson furnished your Committee with statistical data for the purpose of suggesting that Canada could afford a more generous pension for the multiple disability case. A synopsis of this information, showing the relationship between the gross national product in Canada and expenditure on pensions for disability pensioners and dependants, follows:

<u>Year</u>	<u>Gross National Product</u>	<u>Pension Liability WW 1 and WW 11</u>	<u>G.N.P. is larger than pension by:</u>
1930	\$5728 million	\$37 million	154.8 times
1939	\$5636 million	\$40 million	140.9 times
1940	\$6743 million	\$40 million	168.6 times
1945	\$11835 million	\$50 million	236.7 times
1950	\$18006 million	\$93 million	193.6 times
1955	\$27132 million	\$126 million	215.3 times
1960	\$36287 million	\$146 million	248.5 times
1966	\$42056 million	\$181 million	232.4 times

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H.W. Herridge, M.P.

In his appearance before the Committee on March 22nd, 1966, Mr. Herridge stated as follows: ²²

I support the view that if a man has multiple disability his pension should be based on the total of multiple disabilities because a person with multiple disabilities is living under a great handicap. That is one thing that we can do, compensate him for that loss of happiness.

Mr. Herridge stated further that compensation in excess of the 100% level for total disablement might be provided in the form of a supplementary pension. His views were expressed in these words:

Something supplemental. I would support something of that sort if you could do it so that we simply do it in the spirit that we recognize what these people have lost in the enjoyment of life generally, and we give them supplementary benefit or provision for that, without possibly changing the Act as it is presently written.

The Honourable Gordon Churchill, P.C., M.P.

The question of multiple disabilities was raised with Mr. Churchill during his appearance. ²³

In speaking of a possible method by which the 100% maximum could be exceeded, he stated that the 100% pensioner may be a person who "is able to do a certain number of things for himself" and suggested that "the man who is completely incapable of doing anything for himself" should receive supplementary assistance.

Mr. Churchill explained further that this supplementary assistance should be in addition to the Attendance Allowance and concluded as follows:

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We have not been sufficiently careful with regard to men who are totally incapacitated as a sacrifice they made on our behalf. We are just lucky that it did not happen to us, and in this period of social security and the affluent society, I think it is high time we looked after these men who made every sacrifice short of death, and that is what it amounts to. Those who are incapacitated for earning a living are living examples of the horrors of war, that is what they are, and they should not have to suffer the rest of their lives, in an economic sense.

Mr. Jack Bigg, M.P.

In a prepared brief to the Committee, Mr. Bigg suggested the intent of Parliament was not fully stated in the Act in regard to certain financial provisions. He cited multiple disabilities as an example in the following words: 24

The amount of assessment which should be approved for special classes of pensioners suffering from severe disabilities such as paraplegia, blindness, and multiple amputation.

Mr. Bigg stated further in his Brief:

The decision of the Canadian Pension Commission in respect to allowances for special classes of pensioners is, in my opinion, a clear indication of the necessity of Parliament to assume its proper responsibility. Where the establishment of levels of payment has been left to its discretion, the Commission has seemingly awarded amounts which would have to be considered as "the basic minimum". Some examples are cited hereunder:

- (1) Attendance allowance for the blinded, \$2750. out of a possible \$3000. maximum.
- (2) The arithmetical total of a medical assessment is made subject to a limitation of 100% pension, despite the fact that no such limitation is closely described in the Act.

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Mr. Bigg advanced the following specific recommendation:

Special provision to compensate for multiple disability where the arithmetical total of several disabilities is in excess of 100%.

In commenting on his proposal, Mr. Bigg stated:

I think the Act should be specific in providing additional allowance, over and above 100% pension, and I refer you to our neighbours to the south. The American system provides so much additional for loss of legs, on the site If he is totally blind and got 100%, and if he also lost his arms he would get an additional pension for that.

In a discussion before the Committee Mr. Bigg suggested, in general terms, that the existing level of 100% pension was a "minimal requirement for a living standard of today" and that, in asking a totally disabled person to subsist at this level, it was obvious that he would have to make use of any of his capacities which remained unimpaired in order to supplement that income.

He suggested that it was necessary to assess what a pensioner could do over and above his abilities in the untrained labour market, and that, if he had suffered from disabilities which could be assessed at more than 100%, Parliament might give some special consideration to pension for the multiple disability case.

In speaking of the question of Attendance Allowance, Mr. Bigg referred to the necessity for a multiple disability pensioner to meet incidental expenses including renovation, emergency plumbing, and household help and concluded:

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It is common opinion that people in Canada never intended to cut the paraplegic to the bone. He has already been cut to the bone This \$3000. Attendance Allowance is not a princely sum, and is certainly not gracious living.

Chairman, Canadian Pension Commission

Under date of March 21st, 1966 the Chairman of the Pension Commission made a submission to your Committee entitled:²⁵

COMMENTS ON BRIEFS AND PRESENTATIONS TO THE COMMITTEE SURVEYING THE OPERATION OF THE CANADIAN PENSION COMMISSION

In this submission the Commission Chairman set forth the position of the Commission in regard to multiple disabilities. Your Committee has summarized the Commission Chairman's comments under the following headings:

1. The Unskilled Labour Market: The pensioner with the loss of one leg above the knee receives pension at the rate of 80% and is considered to retain 20% of his ability to compete in this market. If he loses both legs his pension can be paid only at the rate of 100% or 20% higher. The basis upon which all war disability pensions have been paid up to now is the ability of the pensioner to compete in the unskilled labour market. The Commission Chairman concluded that a pensioner cannot be more than completely unable to compete in the unskilled labour market, and stated the view that the Commission assumes, using this standard, that he cannot be more than 100% pensionable.
2. Retention of Basic Principle: The Commission Chairman suggested that the proposal to pay pension in excess of 100% for multiple disabilities departs "very radically from the old established basis" of compensation, (i.e. the ability to compete in the unskilled labour market), in that it suggests that he be compensated in accordance with his loss of limbs, the impairment of his normal functions, the state of general physical condition or a combination of these.

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The Commission Chairman considered that a departure from this established principle would give rise to other problems. He cited the example of the surgeon who loses the use of his right hand, compared with the bookkeeper who is a paraplegic. He suggested that this could lead "inevitably to the application of a means test on the payment of a disability pension" in that it could be logically argued that the surgeon should receive more compensation than the paraplegic.

3. Attendance Allowance: The Commission Chairman stated that Attendance Allowance (which is paid to persons who are "totally disabled and helpless" and "in need of attendance" under the provisions of Section 30(1) of the Pension Act) was introduced by the Government "believing that the heavily disabled veteran is entitled to something more than the basic rate of compensation".

In reference to the contention advanced by the Multiple Disabilities group that Attendance Allowance is not to be considered as supplementary pension, he made the following statement: ²⁶

It is argued, with some logic, that these payments are not by way of compensation but rather are designed to assist the heavily disabled pensioner meet the extra expenses resulting from his disability. Nevertheless, the attendance allowance does permit the heavily disabled man to receive very substantial sums in addition to his basic compensation.

4. Systemic Diseases Category: The Commission Chairman suggested that, if a new basis of pension is adopted for amputees, the paraplegics and the blind, it would be necessary to apply the same principle to other types of disability cases. He cited the examples of arthritis, bronchitis, and some cardio-vascular conditions.
5. Requirement for study: The Commission Chairman suggested that, "before it is decided to depart from the basis which has been in use for many years in Canada, a very careful and thorough study of the entire question be undertaken." ²⁷

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Supplementary Submission by the Multiple Disabilities Group

Mr. G.K. Langford, Q.C, Chairman of the National Council of Veterans Associations, submitted a letter to your Committee under date of March 23rd, 1966, requesting permission for representatives of the Associations representing the multiple disability casualty to furnish information concerning the views advanced by the Commission Chairman in regard to multiple disabilities.

Your Committee granted this request and under date of April 19th, 1966, a second submission was made, the main points of which are analysed hereunder;

The Unskilled Labour Market Formula: The submission supported the existing basis for calculation of 100% pension (i.e., the earning power of a man in the class of the untrained labourer). The Associations pointed out, however, that the establishment of a 100% ceiling based on such earnings "is inconsistent with the Table of Disabilities published by the Pension Commission, in that the ratings of certain fixed disabilities as set out in such Table, provide for an assessment in excess of 100%".²⁸

The brief referred to the Commission Chairman's suggestion that a pensioner cannot be more than completely unable to compete in the unskilled labour market and proposed that, at the normal level of disability, the wage of an untrained labourer may be a reasonable guide to the rate of pension. The representatives took issue, however, with the premise that a pensioner should be paid only for that portion of his disability which disqualifies him for unskilled labour and suggested that:

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- (1) The "unskilled labour" formula be retained as the basis of compensation generally; and
- (2) The Pension Act be amended to provide additional pension as a form of special compensation to those who have a total disability rated at 100%, and who have suffered additional disability in the form of anatomical loss or loss of use of major members or organs, where the fixed disability can be assessed at higher than 100%.

The argument advanced in support of this recommendation was that "in the case of severe physical disablement, the person can be completely unable to compete in the unskilled labour market, and at the same time can have a disability which is rated greater than that which would carry a 100% assessment in accordance with the Table of Disabilities of the Pension Commission".²⁹

It was pointed out in the submission that, in his comment to the effect that a pensioner cannot be "more than completely unable to compete in the unskilled labour market", the Commission Chairman was citing a principle which was not contained in the Pension Act, but that the Pension Act did state (in Section 28) that pension shall be awarded "in accordance with the extent of the disability". The Multiple Disabilities Associations suggested that "where a man has suffered multiple disabilities that are several times more severe he must now in fairness be entitled to a pension in accordance with the extent of his disability".³⁰

The Associations suggested that it could not be construed that total disability, represented by 100% pension under Schedule A of the Pension Act, means total disablement. A person with amputation of one leg at mid-

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thigh and a portion of the foot of other leg, rated as a Class 1 pensioner and hence entitled to 100% pension, was used as an example.

The group pointed out that this man still retained very considerable power to do a physical or mental act as defined in the term "disability" in Section 2(j) of the Pension Act. In view of this, the group advanced the argument that "although the 100% rating may be interpreted to mean 'total disability' in the meaning of the Pension Commission, the term 'total disablement' would presumably imply the disabled person was unable to perform any normal mental or physical act". 31

Retention of Basic Principle: The Multiple Disabilities Associations, in referring to the Commission Chairman's suggestion that a departure from the principle of assessment based on earnings in the unskilled labour market would give rise to other problems, **stated that their** proposal in no way suggested deviation from the principle of Section 17 of the Pension Act which reads:

17. The occupation or income or condition in life of a person previous to his becoming a member of the Forces does not in any way affect the amount of pension awarded to or in respect of him.

The Associations suggested that this principle could be retained, pointing out that their proposal provided:

- (1) Pension for total disablement could be paid up to 100% on the basis of earnings in the common labour market; and
- (2) Supplementary pension could be paid for anatomical loss or loss of use, where the disability is clearly defined and is measured in excess of 100%.

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The Multiple Disabilities Association brief suggested that, if pension were awarded in accordance with the extent of the disability as provided in Section 28, and disability were defined as the loss or lessening of power to do any mental or physical act as provided in Section 2(j), there could be no suggestion that pension be based on the loss of any special skills, or that there be any application of a means test as suggested by the Commission Chairman.

Attendance Allowance: The Multiple Disabilities representatives took issue with the Commission Chairman's suggestion that Attendance Allowance had been introduced by the Government in the belief that the heavily disabled veteran was entitled to something more than the basic rate of compensation. The Association brief provided a number of arguments to the effect that Attendance Allowance is not a form of additional pension, but is a payment made specifically to meet the need of a pensioner for special attendance. These are summarized hereunder:

- (1) The original intention of Attendance Allowance was to meet the expense of totally disabled pensioners for "attendance to their physical wants". ³²
- (2) Attendance Allowance is not related to the extent of the pensionable disability, and can be paid to a five per cent pensioner, so long as he can qualify as being "totally disabled" and "totally helpless".
- (3) The War Veterans Allowance Act ³³ specifically exempts Attendance Allowance paid under Section 30 of the Pension Act as income, presumably on the basis that such Attendance Allowance is required to meet the special costs of attendance, and is not available to the War Veterans Allowance recipient for the ordinary necessities of life such as food, shelter, clothing.

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- (4) Attendance Allowance is "encumbered income" and does not represent a financial gain for the recipient. It must be used for payment of extra care and expenditure in the home, and should not be construed as supplementary pension being paid to the pensioner in lieu of pension to which he may be entitled by reason of having a more serious degree of disability than can be compensated for under the 100% rating as provided in Schedule A of the Pension Act.

The brief cited the responsibility of the Government to provide adequate nursing and attendant care and stated that many multiple disability cases would have to remain in hospital if they did not have family members who were willing and able to care for them. The annual cost of maintaining an active treatment patient under the Department of Veterans Affairs was quoted as \$2,400.³⁴ The Associations claimed that "The Government is effecting a saving of money when a pensioner who is totally disabled and helpless is cared for by his family and the Attendance Allowance is paid at the maximum rate of \$3,000. per annum".

The Associations pointed to the fact, also, that a form of constant attendance allowance is paid in most European countries and in the United States, in addition to a form of supplementary pension for those whose disabilities are rated in excess of 100%, and stated that "it is the practice in these countries to make Attendance Allowance available to the seriously disabled pensioner as an amount of money separate and apart from his regular pension".

Systemic Disease Category: The Associations referred to the suggestion of the Chairman of the Pension Commission that a special "multiple disability rate" for disabilities assessed at an arithmetical total in

REPRESENTATIONS AND EVIDENCE

excess of 100% would lead to an insoluble problem in regard to assessment of disabilities in the systemic disease category.

The Multiple Disabilities Associations, in their original proposal heard by your Committee on January 19th, 1966, did suggest that the Pension Commission might establish disability ratings in excess of 100% for the systemic disease group.

They added, in their supplementary brief on April 19th, 1966, that the principle of additional payment for anatomical loss as used in the United States circumvented any problem in dealing with systemic disease cases, as it recognized that such can be compensated within the total disablement category of 100% leaving supplementary pension to be paid for this anatomical loss (or loss of use) of major organs.

Requirement for Study: The Multiple Disabilities Associations agreed with the suggestion of the Commission Chairman that a thorough study of the question of compensation for multiple disabilities be undertaken "before it is decided to part from the basis which has been in use for many years in Canada".

The Associations suggested that the Pension Commission was not prepared to undertake this study and pointed to a reference made in this regard by Mr. T.D. Anderson, Commission Chairman, before the Standing Committee on Veterans Affairs on November 20, 1963, as follows: 35

Mr. Chairman, first of all let me say this. I am in perfect agreement with any suggestion which would assist granting a greater measure of compensation to these heavily disabled persons. I have every sympathy for them. I think something might well be done to improve their lot. It does seem unfair that a man with one leg off and some other minor disability receives a 100% pension, while a paraplegic gets the same.

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The Multiple Disabilities representatives stated that, after the Commission Chairman's statement, they were hopeful that the Commission would undertake a study with a view to recommending some improvement in the situation. Their submission contained the following reference on this point: ³⁶

These Associations brought this to the attention of the Minister of Veterans Affairs at the meeting in July 1964, at which time the Minister requested the Associations to work on a possible method of implementing such a revision of the Act. A proposal in this regard was submitted to the Minister under date of June 6, 1965.

The Multiple Disabilities Associations suggested that the study being given to this matter by your Committee is a direct development arising from their discussions with the Minister.

Chairman, Canadian Pension Commission

In a second appearance before your Committee under date of June 20th, 1966, the Commission Chairman provided further information in respect of the multiple disability question, which is summarized as follows:

- (1) The 100% assessment represented the maximum assessment under the Act and a person could not be more than 100% disabled. His actual words were: ³⁷

One hundred percent means all. Everything. Complete. So that it is not an interpretation; it is a fact that when you are 100% disabled you are completely and totally disabled.

- (2) The problem has arisen from the fact that the Commission pays pensions at the rate of 100% to persons who are not actually totally and completely disabled.

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- (3) The statement made by the Chairman of the Pension Commission to the Standing Committee on Veterans Affairs on November 20th, 1963 was followed up by an increase in Attendance Allowance, which was considered by the Government as a practical method of increasing pension for the class of the seriously disabled.
- (4) There is general opinion to the effect that, despite a recent increase in Attendance Allowance (the maximum was increased from \$1800. to \$3000. with effect September 1st, 1964) the multiple disability casualties are not receiving "as much as they might".

The Commission Chairman expressed the view that it would not be "very practical" to effect an arrangement under which severely disabled persons would be considered as being "more than totally and completely disabled". He suggested that, if it was the intention to provide additional compensation by way of pension for this group, "the proper way is to grant them a bonus". He stated that any such decision would be the responsibility of Parliament.

COMMITTEE RECOMMENDATIONS

(64) That the Pension Act be amended to provide supplementary pension for persons in receipt of 100% pension for total disablement, where the assessment for a pensioned condition or conditions would exceed 100%, except for the limitation imposed by the Pension Act.

Supplementary Pension

(65) That, in establishing the assessment for supplementary pension, the following principles be observed:

Unskilled Labour Market to 100%

(1) The assessment up to 100% should be based on the loss or lessening of the power to will and to do any normal mental or physical act,³⁸ such loss or lessening to be measured in terms of ability to engage in employment in the unskilled labour market.

(2) Any assessment in excess of 100% be approved where one or more of the undermentioned factors exist in a substantial degree:

Other Factors Over 100%

- (a) Anatomical loss; *
- (b) Scarring and disfigurement;
- (c) Loss of enjoyment of life;
- (d) Pain and discomfort;
- (e) Expected shortening of the life span.

(3) For the purposes of assessment, provision should be made as follows:

- (a) Multiple Amputation: The total assessment should be the arithmetical total of assessment under the Table of Disabilities of the Pension Commission, plus any additional assessment under (g) hereof, where paired organs have been affected, providing maximum assessments are as follows: **

Multiple Amputation

*Anatomical loss means also loss of use

**All examples are for above-elbow or above-knee amputation.

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Quadruple amputee, 350%
 Triple amputee, 265%
 Double amputee, 185%

- (b) Quadraplegia: The condition of quadraplegia (motor and sensory paralysis of four extremities, bladder and bowel) should be assessed in excess of 350% under the provisions of Paragraph 4 hereof.

Quadriplegia

- (c) Paraplegia: The condition of paraplegia (motor and sensory paralysis of the lower extremities, bladder and bowel) be assessed at 350% including assessment for loss of paired organs.

Paraplegia

- (d) Total Blindness: The condition of total blindness should be assessed at 250%, including assessment for loss of paired organs.

Blindness

- (e) Conditions arising from injury or surgical removal, other than amputation: An assessment in excess of 100% may be approved where it is determined that:

Other Injuries etc

(i) The arithmetical total of combined assessments exceeds 100%; AND

(ii) One or more of the factors set out in paragraph 2 of this recommendation exists.

- (f) Disease: An assessment in excess of 100% may be approved where it is determined that there is loss of enjoyment of life and/or an expected shortening of the life span, in a substantial degree.

Disease

COMMITTEE RECOMMENDATIONS

- | | |
|---|--|
| (g) <u>Paired Organs</u> : An additional assessment may be approved where there is anatomical loss or loss of use of paired organs, except as provided in (b), (c) and (d) hereof, where it is evident that loss of the paired organs is more than twice as disabling as the loss of a single such organ. The maximum additional assessment for loss of paired organs shall be 25%. | <u>Paired Organ</u> |
| (4) The maximum assessment which may be awarded through a combination of rates as prescribed above shall be 350% except that assessments may be approved in excess of this maximum under the provisions of Section 25 (Compassionate Pension). | <u>Maximum 350</u> |
| (5) Should the basic rate of pension be changed, the multiple disability assessment in excess of 100% pension should be altered in proportion. | <u>Adjustment
Rate Increa</u> |
| (6) Any pension payable under the Act to or on behalf of an eligible dependant should not be affected by assessments, in excess of 100%. | <u>Dependant's
Payment Not
To Be Affec</u> |
| (7) The amount of attendance allowance paid under Section 30(1) of the Pension Act should be based on the need for attendance or special requirements, and <u>not</u> as a form of supplementary payment to compensate for an assessment in excess of 100%. | <u>Attendance
Allowance
Not Pension</u> |

CONTENT

General

Your Committee is of the opinion that the Pension Act as interpreted by the Pension Commission fails to make sufficient provision to compensate the multiple disability casualty, particularly the multiple amputee, the quadraplegic and paraplegic, and the totally blind.

The practice of assessing pensions in accordance with the degree of restriction of a person's ability to compete in the unskilled labour market stems from the 1919 legislation. Two conclusions may be drawn from its application:

1. The pensioner could not be compensated except for physical and mental damage which disqualified him in employment as an untrained labourer; and
2. The class of 100% pensioners would include pensioners whose disabilities were sufficient in severity to disqualify them in the unskilled labour market, but it would also include pensioners who were totally disabled in the sense that they could not engage in employment as common labourers and, in addition, their disability could be such as to create physical and mental difficulties which were not experienced by 100% pensioners whose assessments were based solely on the inability to compete in the field of untrained labour.

This discrepancy was apparent to veterans organizations as early as 1922.

The War Amputations of Canada submitted a brief to the Special Committee on Pensions, Soldiers' Insurance and Re-establishment at the 1922 Session of the House of Commons. This brief made reference to multiple disabilities as follows: 39

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Article 7. That the method of arrival at the rate of disability in cases of men who have multiple disabilities, contracted through enemy action, and whose disabilities taken separately, and added together will total more than 100% be waived, and that this class of pensioner be placed in the 100% class.

The following excerpt is made from the discussion concerning this recommendation:

Herbert M. Marler, Chairman: Your evidence has made that abundantly clear. Have you any questions to ask, Major Power?

Mr. C.G. Power: Not if the Committee is quite clear as to whether or not the aggregate disability should be added.

Mr. Marler: I think we are quite clear on that.

Mr. Wm. Black: Not to exceed 100%?

Mr. C.G. Power: No. In certain cases where a man has over 100% disabilities, there is what is called a helpless allowance.

Mr. Richard Myers: The Amputations Association of the Great War: Yes, take the double amputation above the knee. They recognize his helplessness and they give him an allowance, under a recent Order, of \$250. to cover the extra help and inconvenience that he is put to.

It can be assumed that the veterans organizations of the day were placated, at least in part, with the introduction of an attendance allowance, although it appears that such attendance allowance was paid to permit the pensioner to purchase the perquisites for his daily care, and was not intended as supplementary pension per se.

In the years immediately after World War I the ranks of the 100% pension class were comprised largely of multiple disability casualties. As time we

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on, pensioners with less severe physical incapacity joined the 100% pension class. In effect, this resulted from a more generous application in the field of pension assessment. The increases were fully deserved but it meant that, as more and more pensions were awarded, and as the ranks of the high disability pensioners increased, the multiple disability casualty - who presumably should have enjoyed an increase in his assessment in direct ratio to the general increases in assessment - found that he was squeezed against an artificial ceiling imposed by the limitation of 100%.

This seeming oversight appears to have arisen due to the fact that, over the years, the basis upon which pensions have been awarded in Canada has been expanded from the original concept when the tendency was to grant pension for obvious disabilities arising from gunshot wounds, and training accidents. Gradually, this concept widened with the result that a larger number of pensions commenced to be awarded in other disease categories. This was indicated by the following statistics:

DISABILITY PENSIONS IN PAYMENT

<u>Fiscal Year</u>	<u>Total number of disability pensions</u>	<u>Number of disability pensions in payment in respect of</u>		
		<u>Amputation</u>	<u>Paraplegia</u>	<u>Total Blindness</u>
1922/23	43,263	4,224		
1930/31	66,669	3,205		
1939/40	80,133	1,639		
1950/51	158,739	3,007	136	145
1962/63	147,316	3,061	166 *	96

* This total includes one triplegic and 19 quadriplegics.

CONTENT

Proposed Formula

Your Committee suggests that a means of providing additional pension compensation to the several classes of the severely disabled can be accomplished without disturbing the existing basis of pension.

The proposed formula is:

- (1) Pensions shall be assessed in accordance with the extent of the disability, based on the concept of compensation for physical loss or impairment, and ratings shall be as established in the Table of Disabilities of the Pension Commission, except that where no rating exists, (as in the case of paraplegia) or a new rating is required (as in the case of total blindness) such ratings shall be in relation to the ratings now extant for amputation.

Note: This would provide for assessments in excess of 100% where a disability is rated, in medical terms, as greater than lesser disabilities now properly rated at 100%.

- (2) Pension assessments up to the level of 100% shall be considered as compensation for the lessening of capability to perform work in the class of an untrained labourer.
- (3) Pension assessments in excess of 100% shall be considered as compensation for additional effects of a disability as follows:
 - (a) Anatomical loss.
 - (b) Scarring and disfigurement.
 - (c) Loss of enjoyment of life.
 - (d) Pain and discomfort.
 - (e) Expected shortening of life span.

The key to this formula is that any assessment in excess of 100% should be approved only where the additional factors exist in a substantial degree. It may be true that many pensioners who, in the opinion of this Committee, have a satisfactory assessment could claim that their pensionable

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disability involves some anatomical loss, scarring and disfigurement, loss of enjoyment of life, pain and suffering and/or shortening of the life span.

Your Committee is of the view that, except in the severe cases, these additional factors should not be compensable separately, as they are included in the general principle of loss or lessening of capabilities to perform in the common labour market. It is only when these factors exist in a substantial degree that your Committee recommends separate compensation for them, over and above the assessment level of 100%.

In clarification, your Committee cites the example of a pensioner with an amputation below the knee. The existing assessment is 50%. Such amputation involves the additional factor of anatomical loss but such loss is considered to be part of the general assessment which disqualifies him from engaging in the field of untrained labour to the extent of 50%. Where, on the other hand, a pensioner has undergone amputation of both legs below the knee:

- (1) He is disqualified from engaging in the field of the untrained labour to the extent of 100%; and
- (2) His anatomical loss is in a substantial degree; his scarring and disfigurement is in a substantial degree; he must necessarily experience some loss of enjoyment of life and he would have to live with considerable pain and discomfort.

His assessment under existing application of the Act would be 100%, i.e. 50% for each leg. However, the additional factors should be compensable at a proposed figure of 25% above the 100% normal maximum,

COMMENT

provided in the form of a "paired organ" assessment under Recommendation No. 65 in Paragraph 3(g) on page 540 hereof.

Unskilled Labour Market Basis

Your Committee considers that the basic rate of pension up to 100% should continue to be based on the ability to perform within the **unskilled** labour market. This provides a tested method which has had general acceptance, by which a disability can be measured up to the maximum level of total disablement.

Clarification of the term "total disablement" is required, and the following is suggested:

- (1) Total disablement shall mean that a pensioner has suffered loss or lessening of the power to will and to do any normal mental or physical act, to the extent that such pensioner has no capabilities to perform in the general classification of an untrained labourer.
- (2) Total disablement shall not mean that the pensioner has no capabilities left through which he could perform other acts either in the field of gainful employment or in attending to his day-to-day requirements of living.
- (3) Total disablement shall not mean that, in addition to his disqualification of any ability to compete in the untrained labour market, the pensioner cannot face other penalties, burdens and inconveniences including anatomical loss, scarring and **disfigurement**, loss of enjoyment of life, pain and discomfort and an expected shortening of the life span.

In its administration of the Pension Act, the Pension Commission has already recognized the fact that total disablement means only total disqualification of the pensioner's ability to compete in this common

COMMENT

labour market. As your Committee views the situation, the 100% pensioner in the meaning of the existing interpretation of the Commission is a person who is totally unable to compete in a field of employment which requires a sound mind and a healthy body, but no special training or skill.

Under this interpretation, an 80% pensioner is considered as being 20% able to compete in this field of untrained labour; a 5% pensioner would be considered as 95% able to compete in this field.

The 100% pensioner is, under the present method of assessment, being compensated for this disqualification as an untrained labourer. In many instances the assessment is considered as fully adequate and there is no apparent need to take other factors into consideration. Where, however, a pensioner experiences any of these other factors in a substantial degree, there seems no reason why it cannot be considered that he is totally disabled in respect of his ability to earn his living in the common labour market, and he is deserving of additional pension to compensate him for any substantial scarring and disfigurement, loss of enjoyment of life, pain and discomfort and an expected shortening of the life span.

The retention of the common labour market basis for assessment of pension up to the level of 100% would continue to provide a well-recognized method of assessing pensions for the majority of disability pensioners in Canada. The small minority who could be considered as belonging in the multiple disabilities class would be disabled persons

COMMENT

who are totally unable to compete in the common labour market, and at the same time who have suffered disability of a more severe nature which would mean that they could not perform an act of manual labour and also that their disability was of such magnitude that it carried with it a number of other assessable features. All of these additional features should be compensable in the form of supplementary pension.

Practices - Other Countries

Your Committee has taken into account some of the practices for indemnification for war disabilities and for Workmens' Compensation in Canada and other countries.* It would seem that there are two main concepts as follows:

1. Compensation for physical injury or impairment, compared with the condition of an able bodied person; and
 2. Compensation based on the loss of earning capacity due to physical or mental impairment.
-

* See for example:

1. Workmens' Compensation in Canada, A Comparison of Provincial Laws and the Department of Labour of Canada.
2. Report of the House of Representatives, Washington, D.C., and the British Ministry of Pensions and National Insurance and the Pension Appeal Tribunals, August 27, 1962.
3. Title 38, U.S. Code, Veterans Benefits.
4. The Annals of Comparative Legislation, published by the World Veterans Federation.
5. The Royal Warrant Concerning Pension and Other Grants in Respect of Disability or Death Due to Service in the Military Forces During 1914 World War and after 2nd of September, 1939.
6. Pensions and the Principles of Their Evaluation, Ll Jones Llewellyn and A. Bassett Jones.

COMMENT

Physical Loss: Where compensation is based on an assessment of the actual physical loss the administrators have developed methods of measuring organic or functional disorders and have placed a value on the extent of such disorders, usually expressed as a percentage. This practice places an assessment value on the physical loss, and the value is based simply on the loss itself, with no attempt to rate the value to any yardstick. For example, the loss of a leg is compensated at a fixed amount. This concept implies the use exclusively of medical standards.

Loss of Earning Capacity: Where the concept is based on the loss of earning capacity it is usually required that the administrators institute a method by which it is possible to establish the actual loss of capacity in each individual case. Under this method, different degrees of disablement may be assigned to persons suffering from the same impairment where, because of education, economic conditions or psychological adjustment, one person can suffer a greater or lesser financial loss than another from the same disabling condition. This concept implies the use of medical standards but also requires the use of other forms of assessment in order to determine the degree of economic loss.

CONCEPT

Workmen's Compensation programmes are based on the second concept which attempts to measure the effects of physical damage in terms of loss of earning capacity. The problem of the amounts to be paid is greatly simplified for the administrators, in that the last employment of the workman can be used to indicate his total earning capacity and he can be compensated within this range, based on any lessening of his ability to earn his livelihood.

The system for war disability pensions in Canada represents a combination of both concepts. The Pension Act states that pension shall be payable in accordance with the extent of the disability and thus follows the first concept of compensation for physical injury or impairment. This provides the basis of assessment of medical percentages. Then, in order to place a dollar value on these medical percentages, the Canadian system makes use of the second concept, i.e., that of compensation based on the loss of earning capacity.

However, in order to avoid the complication of attempting to evaluate earning power in relation to a former occupation, or to determine other economic factors in each individual case, the principle has been followed of assuming that the earning capacity in the common labour market is the criterion by which this dollar value is measured.

In the Canadian system, once the earning capacity has been measured on the basis of earnings in the common labour market, no penalty is imposed upon the pensioner who overcomes his economic handicap through the use of prosthesis or through rehabilitation.

COMMENT

The proposed formula which would provide for payment of assessments in excess of 100% for certain classes of multiple disabilities in Canada can, in the belief of your Committee, be superimposed upon the system now followed in administration of the Pension Act, and at the same time conform to accepted principles of compensation. The first 100% of pension would be based on the concept of compensation for loss of earning capacity. Any pension in excess of this 100% would be based on the compensation for other effects of physical and mental damage.

Anatomical Loss: The principle under which special pension assessment is based on anatomical loss is not new. The United States Code of Veterans Penefits is based on a system of ratings ranging from ten to one hundred percent, the latter being termed "total disability" . Where, however, a pensioner has suffered anatomical loss or loss of use of a creative or functional organ he receives additional compensation under a separate provision of the legislation.

It is of direct interest, in this regard, that the United States system is based on indemnity related to the loss of working capacity caused by the results of recognized physical or mental damage. The ratings up to total disablement at 100% are related to loss of working capacity. Where there is anatomical loss the pension may go higher than that paid for total disablement; thus additional compensation is made available to the pensioner for his anatomical loss, based solely on the intrinsic physical impairment.

COMMENT

Two examples of the provision in the United States for special statutory awards for anatomical loss of limbs under which pension is paid in excess of the rate for total disablement, are as follows:

- (1) For anatomical loss of one limb supplementary compensation is granted in addition to the basic disability pension.
- (2) For anatomical loss of both feet or hands, supplementary compensation is paid in the form of specific monthly awards into which the basic disability pension is incorporated.

In France, statutory awards are granted for anatomical loss, in addition to the basic disability pension. ⁴⁰

The Australian Repatriation Act, 1920-1951, provides special indemnity for loss of limb over and above the rates of disability pensions paid to other classes of the disabled. ⁴¹

Special statutory awards in addition to basic pension are paid in Belgium. In accordance with the Co-ordinated Laws on Reparation Pensions in Belgium, Article 12A, amputees are entitled to a fixed annual cash benefit in addition to the basic pension. This benefit is called "amputation indemnity". ⁴²

In the Netherlands, statutory provision is made for supplementary compensation for amputees. ⁴³ For the loss of two limbs under which the general disability pension is increased by 40%. In the case of loss of one limb, the increase over the general rate of percentage is 20%.

CONTENT

In the Phillipines ⁴⁴ the pension rates are increased by specific amounts whenever the incurred disability is for the loss of a hand or a foot, or for both hands or both feet.

The Canadian disability pension system is based on the principle of compensation for physical and mental damage, with the value of the pension being determined by a comparison with wages in the unskilled labour market. There seems, in the view of your Committee, no sound administrative objection to a system which would continue to use this existing basis for pensions up to 100%, and which would also provide additional compensation for severe anatomical loss. This further provision would recognize a stark and obvious fact. The pensioner has lost a substantial portion of his anatomy and, in addition to pension by way of replacement of earnings, he should be entitled to supplementary indemnification to make up, in so far as possible, for the loss of flesh and bone.

Scarring and Disfigurement: A severely disabled veteran is often confronted with a number of psychological problems which may seem to bear little or no relationship to his economic situation. These psychological problems can arise from physical mutilation, where a disability cannot be completely hidden by clothing or be made invisible by prosthesis. Your Committee has no wish to cite illustrations which might seem distasteful. It is necessary, notwithstanding, to illustrate the point in question and, with the indulgence of the disabled group, your Committee desires to make use of some specific examples:

COMMENT

1. A paraplegic, who has been immobilized from the waist down and who must spend most of his waking hours in a wheel chair, creates a certain picture in the eyes of the public. No one would question that his earning capacity is reduced to nil in the unskilled labour market, and that he should be compensated in this respect. Your Committee is suggesting that there should be additional compensation for the disfigurement to his person as evidenced by the wheel chair, the leg braces, and the bony structure of the legs left by atrophied muscle.
2. The blinded veteran, with sightless eyes or with substitute glass eyes, has been deprived of his earning capacity. In addition, he must live the rest of his life as a scarred and disfigured veteran. Your Committee does not wish to be maudlin in these matters, but it seems little enough to suggest that, where the cosmetic appearance has been disturbed in a substantial extent, some additional pension may well be paid.
3. The amputee may have a psychological problem. This would be particularly true in a case where he wears artificial hands or hooks, or does not wear prosthesis at all. The situation would be the same for double leg amputees whose mobility is restricted to artificial legs (often requiring the assistance of canes) or for those confined to wheel chairs, many of whom cannot wear prosthesis.

To a certain degree the pension for these severely disabled classes should be based on the loss of earning capacity. The question now is whether, in considering additional compensation, it would be practicable and justifiable that some pension be payable for what may be called "scarring and disfigurement".

Your Committee considers that where a pensioner has to contend, in his daily life, with a physical appearance which can cause discomfort and embarrassment, and which can create social problems separate and apart from any economic effect on his life, additional compensation would appear to be in order.

Comment

Loss of Enjoyment of Life: Under the Canadian pension system, where disability pension payments are based on a loss of earning capacity, your Committee suggests that consideration also be given to the loss of enjoyment of life, where such is a major factor. This is a broad area which does not lend itself to specific definition. Your Committee has in mind, however, the limitations faced by the severely disabled with regard to participation in many pursuits which are available to the able bodied. A number of activities denied to the multiple amputee, the paraplegic, the blind, and other classes of multiple disability include, in one degree or another:

Hunting and fishing	Active sports
Touring	Camping and outdoor life
Dining out	Community projects
Sexual function and procreation	Gardening
Spectator sports (mostly because of the difficulty of transportation)	

The above list is not all-inclusive, but should serve to give some indication of the sacrifices made by the severely disabled - such sacrifices having no relationship to their capacity to earn a livelihood in the class of the untrained labourer. Your Committee submits that this loss of enjoyment of life, where it exists in a substantial degree, should be compensable in the form of supplementary pension.

Pain and Discomfort: It is the feeling of your Committee that this area has been largely overlooked in the assessment of pensionable disabilities for the severely disabled. Most pensionable conditions carry with them some pain and discomfort. In establishing the provision that pension should be payable on the basis of physical loss, and that this physical loss should be measured in terms of reduced earning capacity, it

Comment

is possible that pain and discomfort have been included as part of the decreased capacity to earn one's living.

Your Committee takes no issue with this viewpoint, where the pain and discomfort are not present in a marked degree. Where, however, the pain and discomfort associated with the disability is of serious proportions (as in the case of paraplegia) it would appear to your Committee that some special indemnity in dollars and cents is warranted. A particular point in this regard is that the pain and discomfort are in evidence 24 hours a day.

The medical experts will have done their utmost to make life more endurable for the paraplegic - but from the information placed before your Committee it seems readily apparent that, to quote an old maxim "What cannot be cured must be endured". It is significant, that in his article, "The Management of Paraplegia",⁵⁰ Dr. A.T. Jousse stated as follows:

Earlier studies revealed that pain or abnormal sensory experiences were present in 90% of persons suffering from spinal cord trauma.

A further quotation from the same article reads:

All, including the patient, must understand that the use of narcotics for relief of pain, except for the terminally ill, is fraught with great danger, as drug dependence and addiction will almost certainly develop.

Your Committee was given to understand, from evidence submitted by representatives of the Sir Arthur Pearson Association of War Blinded, that persons can experience extreme suffering from blindness resulting from damage to the eyes.

COMMENT

One description given to your Committee ⁴⁶ by a blinded veteran, in discussing side effects of blindness, was as follows:

I have the stars that Fred talks about, and signal lights and every darn thing, and I have them right now

As I say you have these constant noises and signals, and God knows what all and if you aren't up to it and have enough guts to take it as you find it, well I don't think you will live to be an old man.

Another blinded veteran described the complication of pain this way. ⁴⁷

The head noises, the stars with total blindness, and the deafness towards the end of the day; the head noises are high pitched sometimes. Nobody can do anything about that; we aren't complaining about them.

In regard to amputation, the classic illustration of pain is what is known as "phantom limb". This is a phenomenon which is peculiar to the amputee -- and is described as shooting sensations of pain of a piercing or burning variety, complicated by uncontrollable twinges and cramping, all of which occur in the amputated limb. The amputation removes the limb itself, but the nerve control centres are still susceptible to pain. This pain is of a very real nature, and is perhaps more disabling than ordinary pain, in that the areas in which the pain exists cannot be reached in a physical way. Moreover, this pain is acknowledged to be difficult to combat with analgesic remedies.

Another form of pain common to amputees is called "fatigue pain" which occurs comparatively often in the joints of the remaining extremities and in the region of the lower back for leg amputees and the cervical spine for upper limb amputees.

Comment

Expected Shortening of the Life Span

Indemnification in the form of supplementary pension for certain classes of the severely disabled could logically be based on a reduction in life expectancy. Up-to-date information regarding the causes of death in paraplegia, as submitted by the Canadian Paraplegic Association, was studied by your Committee. It is indicated, on the basis of statistical analysis, that the survival duration of paraplegics is very considerably below that of the normal population. Those statistics show that a paraplegic who suffered onset of paralysis at age 20 has only another 35 years of life expectancy compared with 49.5 years for the general population. Thus, paraplegics, as a group, will necessarily give up $14\frac{1}{2}$ years of their lives. This would seem ample justification for supplementary pension awards.

Always presuming that the basis of 100% pension is a reduction in earning capacity, the paraplegic should be entitled to any added consequences of his disability. Paraplegia must assuredly reduce his earning capacity on the common labour market to nil. This would be his basic entitlement to 100% pension. His disability will in all likelihood shorten his life by the extent which statistics indicate; hence there seems no question that his pension should be based not only on his loss of earning capacity, but he should receive some compensation for his loss of life expectancy.

Simple mathematics enter into this picture. The Government will not have to pay pension to this group for the same length of time as for other pensioners whose life expectancy has not been affected in any apparent manner by the disability.

COMMENT

The life expectancy of the war blinded and multiple amputees will also be a factor, although the evidence concerning shortening of the life span for these groups is not available. Moreover, your Committee does not imply that the conditions of blindness or multiple amputation would necessarily be an earlier cause of death in the same extent as paraplegia. It must be taken into account, however, that both the blind and the multiple amputee cannot take the precautions available to a physically-able person in the matter of protection from normal hazards of life. Also, in both instances, there is the question of consequential disabilities which is discussed in Chapter 16 of this Report.

Some other members of the general group of multiple disabilities which do not lend themselves to classification, but which will include a number suffering from fatal disease, might well qualify for supplementary pension if there is an expected shortening of their life span in substantial extent.

This entire question of life expectancy is very much relevant to the matter of compensation for pensionable disabilities, and your Committee has no hesitation in recommending that this should be one of the bases upon which supplementary pension should be paid in multiple disability cases.

Assessment for Multiple Amputation

The recommendation of your Committee is that the pension for multiple amputation should be based on the existing assessments in the Table of Disabilities, plus an additional assessment where feasible for loss

COMMENT

or impairment of organs. This Table of Disabilities sets out fixed assessments for amputation, based on physical measurement of the actual loss. The following are given as examples:

Loss of forearm at any level from above wrist disarticulation to below elbow joint disarticulation -	70%
Disarticulation of the arm at the elbow to disarticulation at the shoulder -	80%
Loss of one leg at any level above ankle disarticulation to $4\frac{1}{2}$ below knee -	50%
Loss of thigh, upper third -	80%

The Pension Commission, through experience, has come to relate a loss of a single extremity through amputation at a specific rate, based on a presumed lessening of earning capacity in the common labour market. Where the pensioner has experienced the loss of two extremities, he is compensated for such loss in accordance with the combined assessment as set out in the Table of Disabilities, but such assessment cannot exceed 100%.

It is understandable that when a pensioner's earning capacity is reduced to the extent of 100% in the unskilled labour market, he could not conceivably have his earning capacity as an unskilled labourer reduced further. Hence, the Pension Commission contends that a lessening of earning capacity could not exceed the situation where this capacity is reduced to nil.

In the case of the multiple amputee, however, your Committee feels that he should be compensated for the full measurement of his loss, on the understanding that any assessment in excess of 100% would be justified by special factors, including anatomical loss.

COMMENT

The maximum recommended assessment for multiple amputation is for a quadruple amputee who has suffered the loss of both arms above the elbow, and both legs above the knee and would be 350%. There is, at this time, no quadruple amputee who would qualify for this maximum award. The only quadruple amputee qualified for pension has undergone amputation of arms below the elbow and legs below the knee. His assessment would be 290% including 50% for loss of paired organs.

The assessment and compensation for a triple amputee would be 265%. The double amputee (above elbow or above knee, or one of each) would realize an assessment of 185%. There would be a small number of other multiple amputees who would qualify for a lesser combined assessment, the lowest under this provision being a bilateral amputee with loss of both legs below the knee, providing a maximum assessment made up as follows:

Below-knee	50%
Below-knee	50%
Paired organ factor (if approved)	<u>25%</u>
Total	125%

It should be understood that your Committee does not contemplate the automatic awarding of pensions in excess of 100% for a combination of assessments for a major amputation and:

1. A minor amputation such as the loss of a finger which may be assessed at 10%; or
2. Systemic disease such as diabetes which may be assessed at 60%.

COMMENT

The recommendation concerning assessment for multiple amputation deals only with a multiplicity of amputations which, taken singly, have assessment of 50% or more. If the pensioner has, in addition to a major amputation, a second pensionable disability other than major amputation, any consideration for an increase in pension in excess of 100% would have to be made at the discretion of the Pension Commission or the Pension Appeal Board, under paragraph (e), (f), and/or (g) of Committee Recommendations. (See page 539).

In clarification, the proposed provision for multiple amputation is based on the premise that the condition involves anatomical loss and other special factors, as set out in Recommendation No. 65 * paragraph 2, in a substantial degree. This would not apply to a combined loss through major amputation of one extremity and a minor amputation such as a finger, in that the resulting disabling condition is provided for within the limitation of 100% based on reduction in earning capacity.

Assessment for Quadriplegia

This condition is of such severity that it warrants, in the opinion of your Committee, an assessment in excess of 350%. It has not been possible for your Committee to relate this assessment to the Table of Disabilities, in that such Table does not contain a specific assessment for this condition. This is presumably on the basis that the assessment for the condition is at least 100%.

The proposed assessment for quadriplegia submitted in the Multiple Disabilities Group brief, which was considered by the representatives of this group to be relative to the basic assessment for amputation, was as follows:

* See page 538

COMMENT

Impaired Locomotion

Due to loss of use of limbs	160%
Added factor for loss of use of paired organs	25%

Impaired Use of Upper Extremities

Due to loss of use of limbs	160%
Added factor for loss of use of paired organs	25%
Due to loss of ability to write	15%

Impaired Control of Body Functions

Bowel and bladder	60%
Sexual function	40%
Renal Involvement	60%
Loss of sensation	<u>50%</u>

Total 595%

In the view of your Committee, the quadriplegic would qualify for consideration under the special areas of assessments as proposed in Paragraph 2 of Recommendation No. 65 *, and a special assessment in excess of 350% should be established under the provisions of Paragraph 4.

Assessment for Paraplegia

Comments with respect to quadriplegia would apply to the paraplegic except that the condition is not so severe, as it does not involve paralysis of the upper extremities.

The suggested assessment by the Multiple Disabilities group for paraplegia was as follows:

* See page 538

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CONTENT

Impaired Locomotion

Due to loss of limbs	160%
Added factor for loss of use of paired organs	25%

Impaired Control of Body Functions

Bowel and bladder	60%
Sexual function	40%
Renal involvement	40%
Loss of sensation	<u>40%</u>

Total 365%

Your Committee does not suggest that the figures given below have any great degree of accuracy, but they could be considered as an attempt to set out the basis of the 250 additional percentage points (over the 100% paid for loss of earning capacity) being recommended for the paraplegic.

Anatomical loss	50%
Scarring and disfigurement	50%
Loss of enjoyment of life	50%
Pain and discomfort	50%
Expected shortening of the life span	<u>50%</u>
Total	250%

Assessment for Blindness

The assessment for eye disabilities is set out in the Table of Assessments. The assessment appears to be satisfactory, in your Committee's view, up to the level of guiding vision, which provides that where there is some sight but the vision is less than 6/60, the assessment shall be 100%. It is noteworthy that the Table of Disabilities makes no provision for assessments where the degree of blindness may be greater than that which is limited to guiding vision.

COMMENT

Your Committee is of the view that the condition of total blindness should be assessed in excess of 100% and the figure of 250% is recommended.

The proposed assessment for total blindness, as set out in the Multiple Disabilities group brief, was as follows:

Impaired Locomotion

Due to loss of visual guidance	100%
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Impaired Use of Upper Extremities

Due to loss of visual guidance	100%
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Impaired Communication

Due to loss of sight	100%
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Due to loss of ability to write	15%
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Added factor for loss of use of paired organs	<u>50%</u>
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Total	365%
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Your Committee considers that the maximum assessment for total blindness should be 250% and, for purposes of explanation, a break down of that portion of the percentage in excess of 100% would be as follows:

Anatomical loss	50%
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Scarring and disfigurement	50%
----------------------------	-----

Loss of enjoyment of life	25%
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Pain and discomfort	15%
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Expected shortening of the life span	<u>10%</u>
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Total	150%
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Your Committee has made no attempt to set out an assessment for any condition of blindness between that of guiding vision (less than 6/60), assessed at 100% in the Table of Disabilities, and total blindness, for which your Committee proposes an assessment of 250%. Where it can be determined that the condition of blindness is greater than the "guiding vision" category, but is not one of total blindness, an assessment over 100% could be granted under the provisions of (e), (f) and /or (g) of Committee Recommendations.

COMMENTConditions Arising from Injury or Surgical Removal, Other than Amputation

There may be pensionable conditions other than multiple amputations, paraplegia or total blindness, which should be assessed in excess of 100%. The assessment in such cases would be a discretionary matter. Your Committee wishes to emphasize that any assessment in excess of 100% should be granted only where one or more of the factors supplementary to the loss of earning power in the unskilled labour market exist in a recognizable and substantial degree.

At this point, it should be repeated that the existing basis of assessment, which is based primarily on the reduction in earning capacity, includes some provision for intangibles such as anatomical loss, scarring and disfigurement, loss of enjoyment of life, pain discomfort and expected shortening of the life span. Hence, there is no requirement, in the ordinary case, to make special provision for these areas if they exist only in a small degree, as they are considered to be contained within the 100% limitation based on reduced capacity to earn one's living. Your Committee intends, therefore, that this proposal regarding multiple disabilities should mainly benefit the multiple amputee, the paraplegic and those who have lost total eyesight, always with the understanding that other categories can be included if the circumstances warrant it.

Disease

Your Committee has recommended that special provision may be made, at discretion, for disease cases where the assessment should be in excess of 100%. The comments above in regard to conditions arising from injury or surgical removal other than amputation apply to disease cases.

COMMENT

Paired Organs

The Table of Disabilities makes provision for a so-called "paired organs" factor as follows: ⁴⁸

Where there is damage to paired organs, the arithmetical sum of the separate assessments may fall short of the true degree of entire disablement. In such cases, after inspection of the table, the composite assessment is to be made at the percentage which represents a true estimate of disablement as a whole, eg., the loss of sight of both eyes is more than twice as serious as the loss of either, and again, double amputation may be more than twice as serious as a single one at the same level.

This is subject to the limitation imposed in an earlier paragraph, which states as follows: ⁴⁹

Where more than one pensionable disability exists, the combined assessment will be based on the combined disablement as a whole, but in no case will the combined assessment exceed one hundred percent.

Therefore, under its interpretation of the legislation as set out in its Table of Disabilities, the Pension Commission is unable to give effect to the provision for compensation where there is damage to paired organs in any except amputations of a minor nature or other disabilities where the combined assessment, in the normal course of events, will be less than 100%.

Your Committee agrees with the premise that the loss of paired organs is more than twice as disabling as the loss of a single organ of the same nature. An amputation of one arm is a serious disability, but the pensioner does have the use of his remaining arm to perform many necessary functions. Where a pensioner has lost both arms, it is not difficult to

COMMENT

imagine that his situation has been complicated to an extent far greater than that which may be described as simply the loss of another arm. In other words, the situation of the double arm amputee is more than twice as difficult as a single arm amputee in a number of areas including:

1. Earning Capacity: A single arm amputee has a number of limited fields open to him for employment in that he retains some capacity to write, operate machinery and generally perform duties in the employment market. The double arm amputee must rely completely on prosthesis for any such functions.
2. Scarring and Disfigurement: A single arm amputee can perform many functions in public and private which would not attract attention. Also, he can wear a cosmetic arm for the sake of appearance. The double arm amputee must wear mechanical hooks and his scarring and disfigurement is more than twice as apparent as the single arm amputee.
3. Loss of Enjoyment of Life: The single arm amputee can get about in traffic, can play certain games of skill making use of his remaining arm, and although his disability is a severe one, there are many ways in which he can continue to enjoy life. The double arm amputee can still make a valiant effort in this regard, but, without going into detail, your Committee considers his situation such as to warrant special consideration over and above the pension assessment which would be provided by a simple doubling of the assessment for loss of a single arm.

Although your Committee could find no specific provision in other legislation whereby pension assessments are increased due to the loss of paired organs, it appears inherent in the pension systems of those countries which provide supplementary pension for anatomical loss that, in case of multiple amputation, the assessment is increased above 100% by reason of paired organ factor, as well as by reason of anatomical loss.

COMMENT

In some areas, such as the loss or loss of use of paired extremities (e.g., legs, arms, eyes and ears) the question of compensation for paired organs will be uncomplicated. Where, however, a pensioner has lost an arm and a leg, the need of special assessment for loss of paired organs may not be fully evident, and the recommendation of your Committee in this respect is that the administrators should have some discretion. Another example where discretion is necessary involves organs where medical diagnosis is required to determine the extent of loss of use.

Basic Rate of Pension

It is your Committee's opinion that its recommendations concerning a new basis for multiple disability pensioners must be given consideration solely on the matter of assessment, and this consideration should not be affected by the possibility of an increase in the basic rate of pension.

Your Committee's recommendations on assessment for this group have been made in direct relation to the existing assessments in the Table of Disabilities. Thus the recommendations represent your Committee's considered opinion as to the relative value of, for example, paraplegia as compared with amputation and other disabilities for which fixed ratings can be found in this Table.

Your Committee considers that any realistic increase in the basic rate of pension, assuming that the present level of assessments remains unchanged, would not adequately compensate the multiple disability case.

COMMENT

It appears to your Committee that an increase, in some cases, of as much as $3\frac{1}{2}$ times the present level of assessment, should be made if adequate compensation is to be paid to the more seriously disabled.

If and when an increase in the basic rate is approved for pensions generally, the multiple disability case should be entitled to the full benefit of that increase, as well as the increase in assessment as proposed herein. If this proposal is accepted, the multiple disability pensioner assessed at 350% would be entitled to $3\frac{1}{2}$ times the rate for 100% pension, regardless of the amount represented thereby.

Dependants

Your Committee emphasizes that the proposal concerning assessment for multiple disabilities must be considered on the basis of a pensioner in receipt of single rates of pension.

It is neither fair nor practical to suggest that, because the "average" pensioner is married with dependants, the pension paid on behalf of his family members should be included when citing the total amount of pension paid to him. Any such practice creates a false impression of total pension; moreover, it penalizes the single man.

It is the view of your Committee, as expressed elsewhere in this report, that the dependants of a pensioner have a vested right in his pension. It must necessarily be based on the degree of assessment and must be paid to single men on exactly the same basis as to married pensioners.

COMMENT

In view of the foregoing, your Committee has set out what it considers to be an equitable assessment for multiple disabilities, irrespective of any additional amount which may be payable to or on behalf of dependants.

Attendance Allowance

Your Committee considers that the question of assessment for multiple disabilities has, for many years, been the subject of misunderstanding due to a lack of definition of attendance allowance. Your Committee has set out the history of this provision of the Pension Act in Chapter 17 dealing with Attendance Allowance.

A review of the historical basis indicates that this provision in the legislation was enacted for the specific purpose of assisting a severely disabled pensioner to meet what might be termed the added costs of his disabilities.

For the purposes of considering the multiple disability question, it is perhaps advisable to review this history briefly.

The Pay and Allowance Regulations dated September 1st, 1914,⁵⁰ which represented the initial basis for pension for members of the Forces in World War I, provided as follows:

Where the injury is great enough to require the constant services of an attendant, such as the loss of both legs or both arms or the loss of both eyes; or where the use of both legs or both arms has been permanently lost, the rate shown in Columns "First Degree" and "Second Degree" may be increased one third.

COMMENT

The Pension's Regulations,⁵¹ approved under date of June 3rd, 1916, contained the following clause:

That, to those up to and including the rank of Lieutenant, who are totally disabled and in addition are totally helpless so far as attendance of their physical wants are concerned, the Commission may make a further grant subject to annual review, of not exceeding \$206. per year.

This provision was incorporated into the Pension Act in 1919, and the Section read as follows:⁵²

- 27(1) A member of the Forces holding the rank of Lieutenant (Naval) or Lieutenant (Militia) or a lower rank, who is totally disabled and helpless whether entitled to a pension of Class I or of a lower class, and who is, in addition, in need of attendance shall be entitled, if he is not cared for under the jurisdiction of the Department of Soldiers' Civil Re-establishment to an addition to his pension.

The annotation prepared in connection with the 1919 Act * made no reference to the purpose of Attendance Allowance. Neither has there been any explanation as to the actual purpose of Attendance Allowance in connection with subsequent amendments to the Pension Act.

Your Committee did view a report prepared by the staff of the Pension Commission under date of March 23, 1959, which contained a history of Attendance Allowance. This history indicates that this allowance is granted for the purpose of reimbursing a recipient for the expense incurred either in the employment of an attendant to care for him, or meet other costs in the home and elsewhere arising from his disability.

*Annotation to the Pension Act prepared by Kenneth Archibald, Legal Adviser to the Board of Pension Commissioners July 1, 1919.

COMMENT

Your Committee also took cognizance of the fact that Attendance Allowance is not considered as income under another legislation act of the Department of Veterans Affairs, namely the War Veterans Allowance Act. In this regard reference is made to the WVA Act Section 6(1)(a) which reads as follows:

6(1) Notwithstanding anything in this Act or the regulations, the following receipts are not income for the purposes of this Act.

(a) Income payable under Section 30 of the Pension Act or any similar laws of the country in whose Forces the recipients served.

Attendance Allowance is provided under Section 30 of the Pension Act. Hence, monies paid under this Section are not considered as income for persons in receipt of War Veterans Allowance, presumably on the grounds that the amount represented by Attendance Allowance is encumbered income, paid for the purpose of assisting the pensioner to purchase supplementary requirements required by his disability. As such, these monies do not represent a financial gain for him.

Your Committee observed also that Attendance Allowance may be paid to pensioners whose assessment is less than 100%. In this respect, cases were brought to its attention where Attendance Allowance had been awarded to pensioners in receipt of a pension 5% or less. Your Committee does not imply that the application of the Act in this respect is incorrect. It does seem, however, that Attendance Allowance can be awarded to pensioners who are in receipt of pension at considerably less than the maximum rate of 100%. Accordingly, it

COMMENT

is not realistic to suggest that Attendance Allowance should be considered as supplementary pension in compensation for disabilities which can be rated at higher than 100%. Your Committee does not agree, therefore, with the suggestion advanced by the Chairman of the Pension Commission (see page 529 and page 537 hereof.), that additional pension is being paid to the Multiple Disability casualty through the means of Attendance Allowance.

Your Committee has recommended in Recommendation No. 65(7)^{*} that Attendance Allowance be held as separate and apart from disability pension, and be considered as monies awarded to the pensioner to help offset the added costs of personal services, and/or to meet other needs which are incidental to his disabled condition.

Summary

The necessity to provide some form of supplementary pension for the multiple disability casualty seems evident. The absence of adequate provision in this regard appears as a major flaw in the existing pension system for war disabilities.

It is perhaps surprising that something has not been done to bring about a substantial increase in his pension. Your Committee can only conclude that the lack of action in this respect has been due to failure to evolve a suitable method which could be implemented without disturbing the existing basis of pension for assessment up to the level of 100%.

Your Committee considers that, in general, the basis of computation of assessments for pensioners below this ceiling of 100% is satisfactory. Therefore, no solution lies in attempting to re-arrange assessments so that 100% would represent the most severe category of the pensioner, with

* See page 540

COMMENT

a downward revision in assessments so that all categories of pensioner could be included within the range of 100%. Your Committee desires to make special mention of this, as it is realized that a revision of this type might conceivably be advanced, on the basis that the 100% rate would be paid to the quadraplegic and all other classes of pensioner would be rated somewhat lower, all on the basis, of course, that amounts of the pension would be increased proportionately.

A system such as this might provide an answer for the quadraplegic and the other classes of multiple disabilities, but it could throw the entire pension system into chaos, and could not be supported by your Committee as being a desirable approach to the problem.

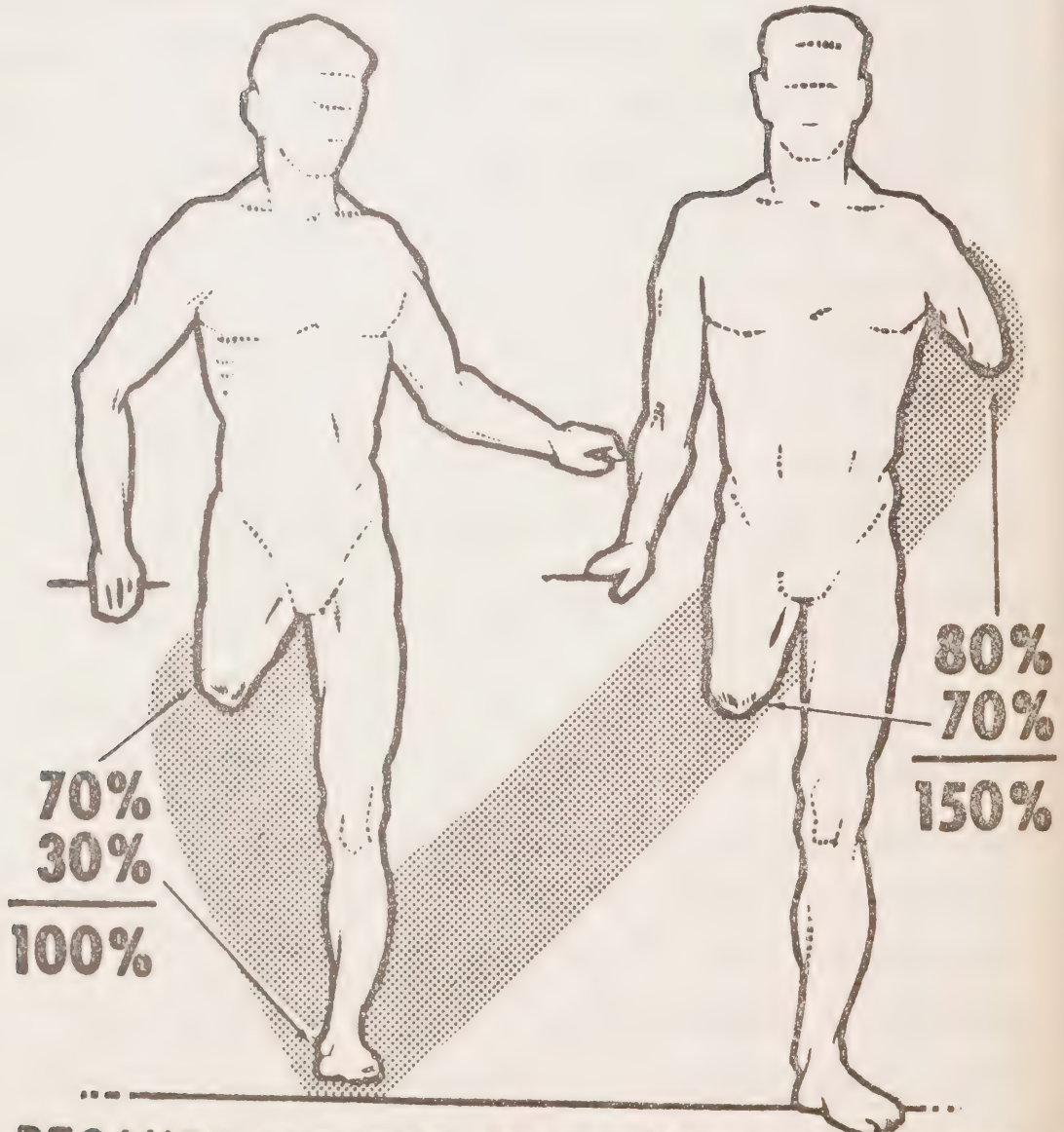
In Consideration of all aspects then it does seem that the most workable proposal would be to retain all assessments below 100% on the existing basis, to be compensated in terms of the loss of earnings in the unskilled labour market. In addition to such, the pensioner who is affected in other areas such as anatomical loss, scarring and disfigurement, loss of enjoyment of life, pain and discomfort and/or expected shortening of life span would be entitled to supplementary pension (regardless of Attendance Allowance).

In proposing this formula, your Committee is aware that it might pose some administrative difficulties. Your Committee feels, notwithstanding that any problems inherent in this proposal are much less evident than in any alternatives which were considered. Your Committee is of the view also that the possibility of administrative difficulty should not form a basis upon which supplementary pension should be denied to those with multiple disabilities. This possibility must necessarily be accepted. Your Committee believes, however, that the formula upon which its recommendation herein is based is workable in the hands of competent and understanding administrators.

APPENDIX "A"

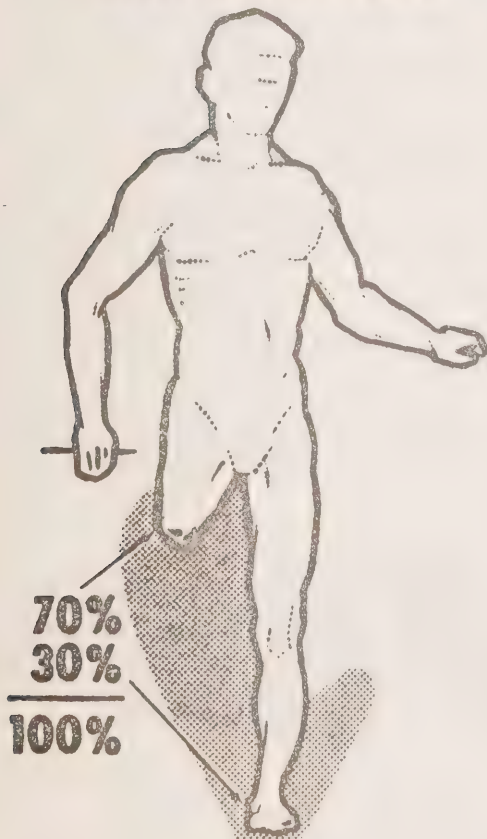
LOSS RIGHT LEG ABOVE KNEE
AND PART OF LEFT FOOT

LOSS RIGHT LEG ABOVE KNEE
AND LEFT ARM ABOVE ELBOW



BECAUSE OF THE 100% "CEILING" BOTH
AMPUTEES RECEIVE SAME PENSION

APPENDIX "B"

COMPARISON - 100 % Disability**AMPUTATION**

Impaired Locomotion
Paired Organ Factor

100%
25%
—
125%

PARAPLEGIC

Impaired Locomotion
Paired Organ Factor
Additional Incapacity
Impaired Control
Bowel & Bladder
Loss Sexual Function
Renal Involvement
Loss Sensation

160%
25%

60%
40%
40%
40%
165%

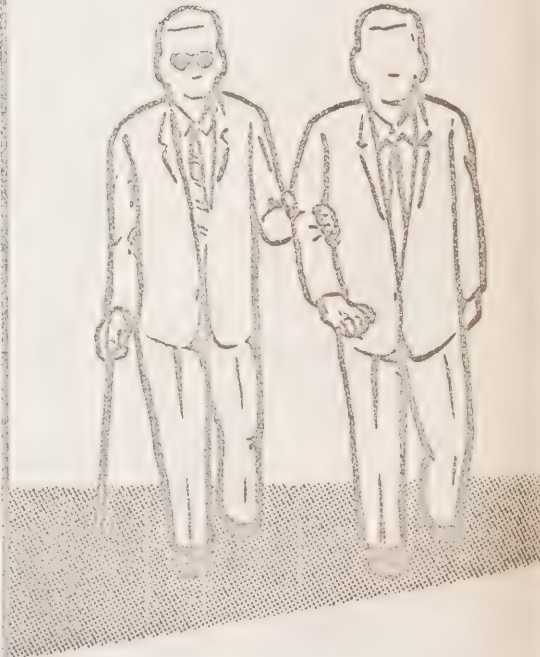
COMPARISON - 100 % Disability

AMPUTATION



Impaired Locomotion	100%
Paired Organ Factor	25%
	<hr/> 125%

BLIND



Impaired Locomotion (due Loss Visual Guidance)	100%
Impaired Use Upper Extremities (due loss Visual Guidance)	100%
Impaired Communication (due loss sight (due inability to write)	100% 15%
Paired Organ Factor	<hr/> 50%
	365%

MULTIPLE DISABILITIES

REFERENCES

1. SC. 1920, C.62 s.l, Assented to July 1st, 1920.
2. Instructions and a Table of Disabilities, for the guidance of Pension Medical Advisers and Examiners, November 1st, 1924, as amended, Page 11.
3. Proceedings of Committee Sessions, Volume I, Page C-6.
4. Ibid, Page C-8.
5. Ibid, Page C-8.
6. Ibid, Page C-9.
7. Ibid, Page C-10.
8. Ibid, Page C-20.
9. Ibid, Page C-39.
10. Ibid, Page C-39.
11. Ibid, Page A-4.
12. Canadian Medical Association Journal, July 1961, "Late Causes of Death and Life Expectancy in Paraplegia", D. J. Breithaupt, M. D., A. T. Jousse, M.D., F.R.C.P.(C) and Megan Wynne - Jones, M. D.
13. Manitoba Medical Review, Volume 43, No. 7, August - September 1963, Dr. A. J. Jousse F.R.C.P.(C).
14. Proceedings of Committee Sessions, Volume I, Page A-8.
15. Proceedings of Committee Sessions, Volume II, Page K-4.
16. Ibid, Page K-4.
17. Ibid, Page K-5.
18. Proceedings of Committee Sessions, Volume IV, Page Q-7.
19. Proceedings of Committee Sessions, Volume II, Page J-6.
20. Proceedings of Committee Sessions, Volume I, Page F-7.
21. Proceedings of Committee Sessions, Volume IV, Page P-23.
22. Proceedings of Committee Sessions, Volume V, Page S-8.
23. Ibid, Page T-8.
24. Ibid, Page Y-7.
25. Proceedings of Committee Sessions, Volume IV, Page R-69.
26. Ibid, Page R-70.
27. Ibid, Page R-71.
28. Proceedings of Committee Sessions, Volume VI, Page FF-14.
29. Ibid, Page FF-2.
30. Ibid, Page FF-3.
31. Ibid, Page FF-14.
32. Ibid, Page FF-16.
33. War Veterans Allowance Act, Section 6 (1) (a).
34. Proceedings of Committee Sessions, Volume VI, Page FF-18.
35. Ibid, Page FF-21.
36. Ibid, Page FF-22.
37. Proceedings of Committee Sessions, Volume VII, Page NN-34.
38. Pension Act, Section 2 (j).
39. Proceedings, Special Committee on Pensions, Soldiers' Insurance and Re-establishment, 1922, Appendix 2, Page 213.
40. The Annals of Comparative Legislation, World Veterans Federation, Vol.10, P. 111.
41. Ibid, Page 217.
42. Ibid, Page 217.
43. Ibid, Page 221.
44. Ibid, Page 221.

45. Manitoba Medical Review, Volume 43, No. 7, August-September 1963.
46. Proceedings of Committee Sessions, Volume I, Page B-25.
47. Ibid, Page B-26.
48. Instructions and Table of Disabilities, for the guidance of Pension Medical Advisers and Examiners, November 1st, 1924, as amended, Page 6.
49. Ibid, Page 5.
50. Pay and Allowance Regulations of Department of National Defence.
51. Order in Council, P. C. 1334, June 3rd, 1916.
52. SC. 1919, C.43, Assented to July 7th, 1919.

CHAPTER 15COMPASSIONATE PENSIONGENERAL

Section 25 of the Pension Act reads as follows:

- (1) The Commission may, on special application in that behalf, grant a compassionate pension allowance or supplementary award in any case that it considers to be specially meritorious, but in which the Commission has decided that the applicant is otherwise unqualified to receive such an award or supplementary award under this Act.
- (2) The amount of any compassionate pension, allowance or supplementary award granted under this Section shall be such sum as the Commission shall fix, but not exceeding the amount to which the applicant would have been entitled if his entire claim to payment had been upheld. 1940-41, c.23, s.11.

Your Committee detected an element of confusion within the Commission concerning the meaning and intent of Section 25. This confusion is understandable, bearing in mind that the Commission has never attempted to set out specific terms of reference for the application of this Section.

General

In support of this statement reference is made to a letter from Mr. L.A. Mutch, then Acting Chairman of the Pension Commission, to the Chief Pensions Advocate under date of May 7th, 1957, which reads in part as follows:

Commission Policy Relating to Section 25

Awards of pension based on Section 25 of the Pension Act may be made by the Canadian Pension Commission in any case that it considers to be specially meritorious, but in which the Commission has decided that the applicant is otherwise unqualified to receive such an award.

Each case is considered on its merits, and in those instances where an award is denied, the Commission simply states that 'an award under Section 25 is not indicated.' The reasons are not set forth, since the effect of such a recital would be, in effect, to define in a negative way what constitutes a 'specially meritorious case'.

The Commission has never given a positive definition, since to do so would be to limit the scope of its application. In this attitude the Commission has been upheld by various Committees of the House of Commons which have reviewed the legislation.

There was ample evidence of the fact that the Commission followed no positive definition regarding compassionate awards. A memorandum² prepared under date of December 4th, 1934 by the Departmental Solicitor of the Department of Pensions and National Health quoted from judgments of the Pension Appeal Court. The following were included:

Destitution without proof of circumstances of special merit is an insufficient basis for compassionate pension.

Specially meritorious must mean something considerably beyond the ordinary service.

General

It is not merely meritorious service, but specially meritorious service which is contemplated as one of the essential elements of the case.

Economic financial condition of a claimant is not sufficient grounds for entertaining an application for compassionate pension.

Although the deceased gave splendid service, the service does not appear to be possible of classification as specially meritorious as compared with that of a vast number of former members of the Forces.

If his service could be considered as specially meritorious the same might properly be said of tens of thousands of others, and I do not think it was the intention of the legislation, unless there were something outstanding or conspicuous as compared with ordinary meritorious service, but the Section should be applied.

Further evidence of the approach of the Pension Commission in regard to the exercise of its discretionary power in respect of compassionate pension is found in the memorandum² to the Minister of Pensions and National Health from the Chairman of the Pension Commission under date of March 28, 1939. This memorandum referred to the question of whether applications for awards under the then Section 21 were appealable to an Appeal Board of the Commission. The following excerpt is considered important:

The power vested in the Commission by Section 21 of the Pension Act toward a compassionate pension in cases which are considered specially meritorious is a discretionary one. It has always been vested in the Commission as a whole, and has never been delegated to any particular select quorum or group of Commissioners, and it would not seem to be expedient or proper that any such delegation of power be made. Necessarily, the exercise of any discretionary power must be very carefully supervised and controlled by central authority.

General

In view of the fact there is no definite statutory limitation or definition of the grounds for the exercise of discretionary power, this is the only way to maintain control and uniformity of award.

Auditor General's observation

Another interesting development regarding this section of the Act concerned an observation from the Auditor General of Canada dealing with an occasion on which the Commission awarded an additional 25 percent pension under Section 21 of the Act (now Section 25) to a pensioner who was in receipt of 75% pension for a condition of neuro-fibromatosis. The Commission had ruled that this was a condition of pre-enlistment origin, had been obvious at enlistment, and had been aggravated seventy-five percent during his service. The assessment was 100% but the man was in receipt of pension of only 75%. After consideration, the Commission decided to grant the man an additional 25% pension under Section 21 of the Act.

The Auditor-General's office commented as follows: ⁴

Section 21 of the Act gives power to the Commission to grant a compassionate pension in cases where the applicant is not entitled to award under the Act, but I am not able to interpret this Section to permit the supplementation of the award already in payment under the Act, and would be glad if this point of law could be submitted to the law officers of the Crown for opinion.

At that date the status of the Pension Commission as sole interpreter of the Act was in some doubt (See page 31* of this report). This question of jurisdiction in regard to interpretation was resolved under date of June 14th, 1941 ⁵ by amendment to Section 5(5) of the Act, such amendment giving the Commission sole right to determine any question of interpretation.

* See Volume I, Chapter 2 dealing with Interpretation.

General

The Commission, in explaining its reasons for making the grant in a letter to the Deputy Minister of Justice under date of December 3rd, 1940, stated as follows: ⁶

The various adjudicating bodies have always interpreted this section as granting a discretionary power to the Commission and associate bodies to award a compassionate pension or allowance in any case which the Commission considers to be especially meritorious, but in which the Commission had decided that the applicant was not entitled to an award as of right, the amount of the compassionate pension or allowance not to exceed the amount to which the applicant would have been entitled if his right to payment had been upheld.

The Commission holds with the view that Section 21 is remedial legislation, and as such must be interpreted in the broadest sense consistent with the language employed.

The Deputy Minister of Justice gave the opinion, under date of February 3, 1941, as follows: ⁷

I have the honour to acknowledge receipt of your letter of December 3, and to say that Section 21 of the Pension Act enacted by Section 10 of Chapter 32 of the Statutes of 1939 appears to limit the exercise of the power given to the Commission to grant pension or allowance in meritorious cases to the cases of applicants unqualified to receive any award under the Act.

It would appear from your Committee's examination of the file that in spite of this ruling the recipient continued to receive pension at the rate of 100% of which 25% was granted as compassionate pension under Section 21 of the Act.

This Section was amended under date of June 14th, 1941. The amendment enabled the Commission to grant a compassionate pension in the form of a "supplementary award" where the applicant was "otherwise unqualified to receive such an award or supplementary award under this Act."

General

The notation which accompanied the draft bill in its submission to Parliament read as follows: ⁹

The Auditor General has questioned the power of the Commission to grant a compassionate pension or allowance in any case where an award is already in payment under this Act. This interpretation would bar any ex-serviceman from a compassionate pension or allowance who held any entitlement, no matter how small, under the Pension Act, and in the opinion of the Commission would largely destroy the usefulness of this Section in so far as it would apply to ex-servicemen. It is to meet this objection of the Auditor General that the changes in this Section have been made.

The file shows a letter to the Auditor General's Branch under date of July 21st, 1941 which states that the Pension Commission considered no further action to be necessary in regard to the Auditor General's observation, in view of the legislative amendment of May 28th, 1941.

Posthumous Assessment

A memorandum to the Chief Pensions Advocate from the Chairman of the Pension Commission under date of November 22, 1952 provides information concerning the award of compassionate pension where an assessment is made after the death of the veteran, and such assessment would presumably have brought the pensioner within a class which would have entitled his widow to a continuation of pension under Section 36(3) of the Pension Act. The memorandum states: ¹⁰

The Commission cannot assess disability after death, but there are a few cases where special consideration was warranted and advantage has been taken of the provision of Section 21 (now Section 25) to make a compassionate award.

It is noteworthy in these cases that no reference is made to the necessity that service be "specially meritorious" or "beyond ordinary service" as brought out in the judgments of the Pension Appeal Court set

General

out in the memorandum from the Departmental Solicitor on December 4th, 1934, discussed on pages 582 and 583 hereof.

Meritorious Service

It might be concluded that between 1934 and 1952 the policy with respect to compassionate pension underwent considerable change, in that the Pension Commission no longer required that the military service of the applicant on whose behalf application was made be "something outstanding or conspicuous as compared with ordinary meritorious service" which appeared to be the requirement in the early 1930's.

Your Committee found it necessary to draw an inference here because it could find no directive or instruction issued by the Pension Commission in regard to this change. Notification, if any, of any such change to the Veterans' Bureau or to veterans organizations must have been by word of mouth. The alternative for those responsible for securing assistance for applicants would be to learn of such changes through experience with cases.

In any event, as late as 1960 we find a letter from the Chairman of the Pension Commission, written to a Pensions Advocate, setting out certain requirements of Commission policy in relation to awards under Section 25 of the Act.¹² In this letter the Chairman of the Pension Commission stated as follows:

The following factors are invariably considered:

- (1) The financial position of the applicant. Is he or she obviously in need?
- (2) Quality of service of the applicant or the applicant's husband during war-time. Has the individual been decorated for gallantry, or was his service otherwise outstanding?

General

- (3) Physical condition of the applicant. Is the applicant disabled as a result of non-service incurred disability to the point where he or she is unable to accept employment?

The letter went on to say that, although these were some of the main factors to be considered in awarding pensions under Section 25, there were many others.

Veterans' Bureau Directive

The Veterans' Bureau brief stated that the Chief Pensions Advocate had issued a directive to Pensions Advocates under date of December 5, 1956, This directive is important to an understanding of the use of Section 25 and is reported hereunder in full.¹²

I have reviewed a number of files in which favourable decisions have been given recently by the Commission under Section 25 in order to determine the essential facts taken into consideration in such cases. I have reached the conclusion that the existence of Section 25 should never be overlooked, particularly in cases which widows have received unfavourable decisions following a death claim. The following are some of the facts which are taken into consideration by the Commission in reaching a decision:

(1) Length of Service in a theatre of war

- (a) Length of time in actual front lines or its equivalent.
- (b) Wounds received.
- (c) Rank held.

- (2) Decorations: While an award of a decoration does not appear to be essential, if there is no award some evidence should be secured that the veteran's service was outstanding in some

General

respect. It should also be noted that the award of a decoration standing alone is not in every case accepted as evidence of specially meritorious service.

- (3) Financial circumstances: The poor economic position of a veteran or widow is extremely important. Unless the veteran or widow is in great need, regardless of other circumstances, an application would probably be unsuccessful.
- (4) Health: The poor health of a veteran or of the widow is important. In the case of a widow, inability to earn a living due to poor health is a factor. The widow having small children which makes working difficult is also a consideration.
- (5) Service of other members of family: The fact that a veteran has sons who have served is a factor which is considered.
- (6) Pension Entitlement:
 - (a) The fact that no application for disability pension was ever made in the past is a factor.
 - (b) In some cases in which the Commission considers appropriate, pension now received under Section 13 has been supplemented under Section 25.

General

- (7) Additional pension for dependents: In some cases in which a prior marriage has been dissolved by divorce proceedings which are not recognized by the Commission, the wife, pursuant to subsequent marriage ceremony, has received additional pension under Section 25. This procedure was used in a number of cases in which the first English wife received a divorce in the English Courts pursuant to special legislation, and the veteran remarried.
- (8) Unfavourable entitlement decision: It appears that an unfavourable initial decision or decision on First Hearing is sufficient evidence that the applicant 'is otherwise unqualified', and it is not necessary to proceed to an Appeal Board Hearing.
- (9) Service in Regular Forces, N.P.A.M., Militia or other Service equivalents: Evidence of lengthy and good service in peace time should not be overlooked.

After consideration of the above, when you consider that an application under Section 25 is warranted, it is suggested that you draft a statement covering the above points in as much detail as you are able to obtain from the applicant. This statement should be signed by the applicant and contain a request for consideration by the Commission under Section 25. The statement should be referred by you to the Pension Medical Examiner, with a copy to this office.

GeneralCommission experience

Apart from the above, your Committee was able to elicit little information concerning this Section of the Pension Act. In the exercise of its wide discretion under the Act, the Pension Commission seems to have arrived at few guidelines for its application. In any event, none were apparently made available for the information of advocates and others representing veterans.

The view of the Pension Commission was expressed by the Chairman as follows:¹³ "To define, in precise terms, the conditions under which such awards shall be made is simply to limit the use of the Section".

The number of awards made in the form of compassionate pension under the Pension Act from 1925 to date are given below:¹⁴

<u>Fiscal</u> <u>Year</u>	<u>No. of</u> <u>Awards</u>	<u>Fiscal</u> <u>Year</u>	<u>No. of</u> <u>Awards</u>
1925-26	12	1945-46	14
1926-27	2	1946-47	20
1927-28	2	1947-48	15
1928-29	7	1948-49	19
1929-30	4	1949-50	34
1930-31	3	1950-51	26
1931-32	—	1951-52	7
1932-33	3	1952-53	14
1933-34	—	1953-54	9
1934-35	40	1954-55	28
1935-36	56	1955-56	15
1936-37	51	1956-57	14
1937-38	53	1957-58	25
1938-39	51	1958-59	10
1939-40	69	1959-60	8
1940-41	57	1960-61	4
1941-42	71	1961-62	13
1942-43	63	1962-63	62
1943-44	33	1963-64	11
1944-45	16	1964-65	7

General

An analysis of these figures indicates that the number of awards have averaged between 12 and 13 a year since 1950, except for the fiscal year 1962-63 when a total of 62 awards were made under Section 25 of the Act. The increase in this particular year was accounted for by an unusually large number of compassionate pensions granted to Canadian veterans resident in the United Kingdom who, if they had been living in Canada, would have been entitled to War Veterans Allowance through the Canadian government. These men had all served in combat areas during World War I and, although they presumably could not qualify under the regular Sections of the Act, it was the decision of the Commission to award pension to them under Section 25.

It seems apparent that the Commission has no fixed policy regarding the type of cases which can qualify for compassionate pension. The Commission presumably uses this Section in a restricted manner, to grant pension where an award cannot be made under the entitlement sections of the Act, but where the Commission considers that the circumstances are such as to warrant special consideration.

Considerable concern was expressed in representations to your Committee in regard to what is generally known as "compassionate pension", as provided under Section 25 of the Pension Act.

The Veterans' Bureau of the Department of Veterans Affairs stated that Section 25, as applied by the Pension Commission "is veiled by too much uncertainty and inconsistency".¹⁵ There was support for this view in other representations, and in your Committee's investigations regarding the use made by the Pension Commission of this Section.

The Royal Canadian Legion brief observed that, in the Legion's experience, the Pension Commission did not give adequate reasons for rejection of applications under Section 25.¹⁶ This placed the advocate in the position of being hampered in the preparation of subsequent submissions, as he was unable to determine the grounds upon which such applications could qualify.

L'Association du 22ieme Inc. stated as follows:¹⁷

Our membership is unable to obtain any comprehensive information as to the terms of qualification under this Section. It does appear that the interpretation is a restricted one and we know of very few instances where pensions have been granted under this Section. It is suggested that Commission should publish information as to the terms of reference governing this Section of the Pension Act so that organizations would be in a position to submit application on behalf of their members, or on behalf of widows, and dependents of members, or as such who cannot qualify under the regular sections of the Pension Act, but where consideration could be given, where meritorious circumstances exist.

REPRESENTATIONS AND EVIDENCE

The Hong Kong Veterans Association recommended that the Pension Commission make use of this section of the Act to provide pension for certain widows of Hong Kong prisoners of war who had died since World War II. This Association recommended, also, that the Education Assistance Act be amended so that, where a Compassionate Pension under Section 25 is awarded to a widow, her pensionable children would be made eligible for educational benefits under the Education Assistance Act. Such children are not now covered under the provisions of this Act, which makes financial assistance available to children pursuing a course of education beyond secondary school level.¹⁸

Several Members of Parliament stated the belief that this Section of the Act was given only limited application by the Pension Commission, and recommended that:

- (1) Wider use be made of this Section to provide pensions in compassionate circumstances; and
- (2) Information be made available in published form concerning the types of case which can qualify under Section 25 of the Pension Act.

HISTORY

The first recorded reference to compassionate pension is in 1918
Order-in-Council PC 470 dated December 21, 1918 which read as
follows:

- 32(a) In special cases of hardship which are not covered by the Pension Regulations and in cases in which special relief should be given, the Commissioners shall have exclusive authority to make a recommendation to the Governor-in-Council and the Governor-in-Council shall have authority upon such recommendation to award a pension or to afford relief.

This provision may have been based on a similar provision in the Statutes of Great Britain, which provided that the Secretary of State, with the concurrence of the Treasury Board, be given discretion to make payments in exceptional cases where an otherwise deserving case had been refused by the British Ministry of Pensions and the Appeal Tribunal.

The authority to make special awards of a compassionate nature 1923
became part of the Canadian Pension Act in 1923. It is believed that the purpose of the enactment of this measure was to permit pension awards in cases of special merit and hardship.

The origin of this Section of the Act is interesting. Bill 205, being an Act to amend the Pension Act,¹⁹ was studied by a Special Committee of the Senate, which reported to the Senate under date of 27th June, 1923.²⁰

HISTORY

This Report made reference to four clauses proposed in Bill 205 which provided that:

- (1) Pension could be paid, under the definition of dependent parent, to a mother whose husband was in a helpless and dependent condition;
- (2) Pension could be paid to a widow if she was married to a deceased pensioner within one year after the date of his discharge from the Forces;
- (3) The requirement be removed that, before a widow could receive pension on the death of her husband who was a pensioner in receipt of a pension of 80% or more, such death would have to occur within five years after the date of retirement or discharge or the date of commencement of pension; and
- (4) Pension could be paid to any person who was being, or was entitled to be supported by a pensioner at the time of his last examination, should such pensioner have his pension cancelled by refusing or neglecting to present himself for medical re-examination.

The Senate Committee suggested that these clauses be deleted from the bill and be replaced by a "blanket" clause governing special cases.

The pertinent comments in the Report were as follows: ²¹

Your Committee is of the opinion that these clauses were introduced primarily by members of the House of Commons to cover individual cases, that their adoption would open the door to a large number of cases as to which no provision should be made, and that such individual cases may be reasonably taken care of by the adoption of the following clauses:

"Any individual case which in the opinion of the majority of the members of the Pension Board and the Appeal Board acting jointly appear to be especially meritorious and for which in said opinion no provision has been made in this Act, because such case did not form part of any class of case, such meritorious case may be made the subject of an investigation by way of compassionate pension or allowance irrespective of any schedule to this Act".

HISTORY

Bill 205 was subsequently amended and became law June 30th, 1923.²² The four clauses, to which reference had been made in the Senate Committee report, were not included in the amendment to the Pension Act. Instead, the legislators made provision for compassionate pension in the form as recommended by the Senate Committee in its report.

It would appear from the foregoing that compassionate pension was intended as a means of permitting the Board of Pension Commissioners to approve pension where an application had some special merit, but could not qualify under the ordinary sections of the Act because of some technicality.

The Royal Commission on Pensions and Re-establishment of 1922-24 1924 gave special consideration to the application of this provision of the Pension Act.

A memorandum, submitted to the Royal Commission jointly by the Chairman of the Board of Pension Commissioners and the Chairman of the Federal Appeal Board, stated that the two Boards, acting jointly, had been unable to make awards of compassionate nature under the then existing provisions of the Pension Act for the reasons that 23

- (1) The Joint Boards had concluded that compassionate pension or allowance could be made only in cases where pension had been refused because the death or disability of the member of the forces was due to improper conduct; and
- (2) In consideration of the words in the Legislation which read: "Because such case did not form any part of class of case" an award could not be made where pension has been refused due to improper conduct,

HISTORY

inasmuch as provision was made in the Statute for cases arising out of improper conduct if the applicant was in a dependent condition or if the death of the member of the forces concerned had occurred on service prior to the coming into force of the Pension Act. (in 1919).

The Royal Commission recommended that any provision deemed necessary for permitting the grant of a compassionate pension or allowance should be made by way of an entirely independent and substantive section separate from the Section dealing with improper conduct.

As a result the Pension Act was amended in 1924 as follows: ²⁴

22. Any member of the forces or any dependent of a deceased member of the forces whose case in the opinion of a majority of the members of the Board of Pension Commissioners of Canada, and a majority of the members of the Federal Appeal Board, appears to be specially meritorious may be made the subject of an investigation and adjudication by way of a compassionate pension or allowance with the assent of the Governor-in-Council; provided that the pension awarded under the authority of this Section shall not exceed in amount that which could have been granted in the like case under other provisions of this Act if the death, injury or disease under which the pension is claimed, was attributable to military service.

The provision for award of compassionate pension in the Act was amended in 1928.²⁵ Such amendment did not change the general intent and purpose of the Section but made provision that grants could be approved under this Section on the authority of the Board of Pension Commissioners, without the concurrence of the Federal Appeal Board, as formerly required. The amendment provided also that, on refusal by the Board of Pension Commissioners, an applicant could appeal to the Federal Appeal Board which could recommend an award.

HISTORY

By amendment of the Act in 1931,²⁶ the powers of the Federal Appeal Board in regard to compassionate pension were transferred to the newly-created Pension Tribunal and Pension Appeal Court. Again, the intent and purpose of this Section remained unchanged.

1931

RECOMMENDATIONS

(66) That Section 25 of the Act remain in its present form.

Section 25
Remain in
Present Form

(67) That the Pension Commission make fuller use of this Section to approve pension awards, or any addition to pension in circumstances where the Commission considers that such should be paid, but where no other enabling Section of the Act would permit payment; and that its use be broadened in line with the original intent of meeting exceptional cases not covered in the other Sections of the Act.

Commission
To Make
Fuller Use

(68) That, in applications under this Section of the Act, the calibre of service of the applicant need not necessarily be a factor and the person on whose behalf application is made need only meet the ordinary standards of service.

Ordinary
Standard of
Service Only
Be Required

(69) That adjudication of applications for compassionate pension may be dealt with by:

Application
Procedure

(a) The Commission as a whole;

(b) One or more Commissioners through the process of a personal appearance under Section 7(3) .

(See Recommendation 6 *)

(c) By Entitlement Boards at entitlement hearings.

(70) That the procedure for applications for compassionate pension be set out in an Administrative Instruction.

Administra-
tive
Instruction

(See Recommendation No. 103 **)

* See Volume I, Chapter 3, page 47.

** See Volume III, Chapter 23, page 852.

COMMITTEE RECOMMENDATIONS

- (71) That application for compassionate pension may be appealed to the Pension Appeal Board.
- (72) That the purpose of compassionate pension be set out in a "Supplementary Benefit" Instruction. (See Recommendation No. 102 *.)
- (73) That, where a compassionate pension under Section 25 is awarded to a widow, her pensionable children be made eligible for educational benefits under the Education Assistance Act.
- (74) That a compassionate pension under Section 25 may be awarded in excess of the maximum assessment of 350% as provided in Recommendation No. 65 (4).**

AppealsSupplementary
Benefit
InstructionEducation
Assistance
ActMultiple
Disabilities

* See Volume III, Chapter 23, page 852.
 ** See Chapter 14, page 540 hereof.

STANDARDSection 1

Your Committee considers that the existing Section 25 of the Pension Act is an essential and valuable feature of Canada's pension program for veterans and members of the peacetime forces. It is inconceivable that it would be possible to cover all exigencies by way of regular sections of the Pension statute. Therefore, the decision to establish a form of compassionate pension, as first set out in the Pension Act in 1924, is considered to be basically sound.

It seems doubtful that full use has been made of this provision of the Act, although it is admittedly difficult to determine to what degree this is so. Your Committee is left with the distinct impression that a restricted use of this Section has resulted, at least in part, from the fact that the Commission has failed to institute a regular procedure under which applications could be considered. Also the Commission has failed generally to provide those who work in the field of advocacy on behalf of pension applicants with any concrete information concerning either a procedure under which the Pension Commission could entertain applications, or a general policy governing compassionate awards.

Character of Military Service

Your Committee is particularly interested in the fact that, in the late 1930's, the idea seemed to have been generated by the Pension Commission, presumably on the basis of interpretations handed down by the Pension Appeal Court, that the person on whose behalf an application for compassionate pension could be considered must have had military service of an outstanding character.

COMMENT

This is not to minimize the importance of outstanding service as a factor. It should not, however, crowd out other factors. If "specially meritorious" was intended to include the types of cases referred to in Bill 205 (see page 596) it would extend considerably beyond meritorious military service. The mother whose husband was in a helpless and dependent condition could merit the status of a dependent parent. The widow of a pensioner who married him after his date of discharge, and who at that time was not otherwise entitled to pension, might be considered as being duly qualified for compassionate pension. Similarly the widow whose husband's death occurred more than five years after discharge, and was not then entitled to pension, could be considered worthy of consideration. Also, a dependant cut off because of termination of the pensioner's rights through no fault of the dependant, could be viewed as meritorious.

Although your Committee does not consider that "specially meritorious" should be limited to occasions such as these, the cases do illustrate that originally the intent was much wider than its present application would indicate, and particularly that the character of service was not a major factor.

This latter qualification has been introduced by the Pension Commission subsequently and your Committee does not criticize this. What it does wish to emphasize, however, is that the nature of Section 25 is such that experience should dictate an expansion of the basis upon which the Section can be used, rather than a contraction.

COMMENT

The section of the Act itself contains no reference to the type of service and states only that the circumstances must be specially meritorious. There is, however, no requirement in the legislation which must be taken as indicating that an award of compassionate pension should be made as a reward for outstanding military service. In other words, the section is open to the interpretation that "meritorious" refers to existing circumstances, and not to the character of service.

Your Committee did note that the original intent of the compassionate provisions of the Pension Act seemed to have been obscured with the passage of time. In its inception, this Section was meant to provide authority in the case where there was some ground for an application of pension, but where it might be considered that no exact provision had been made in the Act, in that the circumstances were of the type which would be encountered only in exceptional cases.

Your Committee considers, therefore, that the use of this Section should remain flexible, and that its use be broadened in line with the original intent

Procedure for Adjudication With the Commission

Your Committee suggests that the procedure in respect to adjudication of application under Section 25 should be as flexible as possible. It is for this reason that the Committee, in Recommendation No. 69* proposes that the Commission be allowed to deal with applications for compassionate pension either by the Commission itself, by way of Section 7(3) personal appearance, or by an Entitlement Board at an entitlement hearing .

This would mean that the Commission would be able to pursue its

* See page 600 hereof.

COMMENT

present policy of exploring the possibility of a compassionate award when it becomes apparent to the Commission that an entitlement claim cannot succeed under a regular section of the Act.

The provision that compassionate awards may be processed by way of 7(3) personal appearances places in the hands of the Commission a relatively simple procedure under which one or more Commissioners could receive first hand evidence and could interview the applicant personally.

It was your Committee's view that, under the existing provisions of the Section 7(3) of the Pension Act, the Commission could have given an applicant an opportunity to appear before one or more of its members to plead his case for a compassionate award. It is the understanding of your Committee that the Pension Commission permitted such appearances only on very rare occasions. It is of only academic interest now, but had the Commission used 7(3) personal appearances as a form of appeal in compassionate awards, there may have been considerably less criticism regarding this Section of the Act.

Your Committee considers it essential, as well, that the provision be available in the course of an Entitlement Board hearing for consideration of a compassionate pension. This would permit an advocate or other representative, acting on behalf of an applicant in an entitlement proceeding, to apply for consideration under Section 25 co-incident with the main subject of the entitlement proceeding.

Your Committee is of the view, as the recommendations show, that the Pension Commission requires considerable flexibility in the handling

COMMENT

of some discretionary matters. Compassionate pensions seem to fall into this category as they usually arise from, or with, another type of claim. In many instances compassionate pension could be used as a means of finding a substitute for that which cannot be otherwise provided.

The Pension Commission should be left in a position to deal expeditiously with claims of this nature. In this respect, the recommendation that the Pension Commission be allowed to use several methods of processing compassionate pension claims would facilitate the handling of any larger numbers of such cases that could well follow extension of the present bases of award.

Appeals to Appellate Body

Provisions for the establishment of an appellate body, as proposed in Recommendation No. 14 * , would provide the possibility of a further hearing, in these applications, if needed. Your Committee is of the view that, before an application for compassionate award is finally disposed of against an applicant, he should have an opportunity to have his case placed before the appellate body, provided such appellate body is prepared to grant leave to review the record or alternatively to hold a hearing.

This would place the final authority for compassionate awards in the hands of the appellate body. In addition to the personal hearing recommended, the applicant would have a review by an authority outside of the Commission. This should, in large measure, meet the criticisms of uncertainty and arbitrariness drawn from the actions of the Commission under the Education Assistance Act.

The Education Assistance Act is available for the children of ...
See Volume 1, Chapter 1, page 77

COMMENT

in receipt of pension, where the father's death was attributable to service, or where the widow is receiving pension by reason of the fact that the father was in receipt of pension of 48% or greater, or for other reasons as provided under Section 36(3) of the Act.

This Act provides the student with a living allowance of \$34.00 a month while in receipt of pension, and \$94.00 a month when pension is discontinued. The Act provides also for the payment of tuition and other fees not exceeding \$800.00 in any academic year.

Your Committee noted that when pension is paid to a widow in the form of a compassionate award under Section 25, the children were not eligible for the Education Assistance Act, unless the father's death was service-connected. The rationale behind this restriction was not obvious to your Committee, and it did appear that if a case was considered sufficiently worthy to permit the granting of compassionate pension to a widow with children who were the issue of the member of the forces, there seemed no valid reasons why such children should suffer the discrimination of exclusion from the benefits of the Education Assistance Act.

Directives and Application Forms

At present there is no formal procedure whereby an application can be made for pension under Section 25. It appeared to your Committee that, in most instances, applications for awards under this Section arose during consideration of an entitlement claim when it became apparent that such could not be approved by the Commission under any other Section of the .

In some instances the application was put forward by an advocate in

COMMENT

the course of his handling of an entitlement claim. In others the application was initiated by the Commission itself, after rejection of the claim for entitlement. This implementation by the Commission is, in your Committee's view, quite proper and is the type of initiative that should be expected of the Pension Commission. Your Committee is of the view, however, that the use of Section 25 should not be limited to a procedure where the majority of applications arise only out of refusal of a claim for entitlement.

Accordingly provision should be made for a regular procedure for applications under this Section. This will be necessary if the use of the Section is to be broadened, and if those who must assist the veteran are enabled to do so effectively.

There should, therefore, be directives available, explaining the procedure and the purpose of the Section. Your Committee does not see this as necessarily restricting the discretion of the Commission and it would give the application of the Section an order which it lacks at present. Persons desiring to avail themselves of the Section should have forms available which can be submitted to the Commission for adjudication.

COMPASSIONATE PENSION

REFERENCES

1. Proceedings of Committee Sessions, Volume VI, Page KK-28.
2. Canadian Pension Commission subject file on Compassionate Pension.
3. Ibid.
4. See Committee Case file No. 4.
5. SC. 1941, C.23 Assented to June 14th, 1941.
6. Canadian Pension Commission subject file on Compassionate Pension.
7. Ibid.
8. SC. 1941, C.23 Assented to June 14th, 1941.
9. BILL 17, as approved by House of Commons, May 28th, 1941.
10. Canadian Pension Commission subject file on Compassionate Pension.
11. Proceedings of Committee Sessions, Volume VI, Page KK-29.
12. Ibid, Page KK-30.
13. Proceedings of Committee Sessions, Volume IV, Page R-41.
14. Statistics supplied to Committee by Chairman, Canadian Pension Commission on July 20, 1966.
15. Proceedings of Committee Sessions, Volume VI, Page KK-29.
16. Proceedings of Committee Sessions, Volume III, Page I-129.
17. Proceedings of Committee Sessions, Volume IV, Page Q-11.
18. Proceedings of Committee Sessions, Volume V, Page BB-24.
19. BILL 205, as approved by House of Commons, June 13th, 1923.
20. Report, Special Senate Committee 1923, Senate Debates, June 28, 1923, Page 538.
21. Ibid.
22. SC. 1923, C.62 Assented to June 30th, 1923.
23. Report, Royal Commission on Pensions and Re-establishment, 1923-24, Sessional Paper 203, Page 14.
24. SC. 1924, C.60 Assented to July 19th, 1924.
25. SC. 1928, C.38 Assented to June 11th, 1928.
26. SC. 1931, C.44 Assented to August 3rd, 1931.

POST-DISCHARGE CONSEQUENTIAL DISABILITIESGENERAL

For purposes of clarification, consequential disabilities are dealt with in this Report under two categories, as described hereunder:

1. Physical Injury: This category of consequential disability arises from an injury suffered as a result of a post-discharge accident which is claimed to be caused by a pensioned condition. The following cases are cited as examples:

The Step-Ladder Injury¹

A veteran pensioned for a leg amputation was on a step-ladder, carrying out a household repair. He lost his balance, fell and suffered a fracture of the wrist.

The Slippery Sidewalk Injury²

The pensioner was receiving a 20% pension for injury to his right leg. He slipped and fell on a snow-covered sidewalk, causing further damage to the ankle of the injured leg.

Some examples of accidents involving physical injury where a pensioned condition could be a causal factor are:

1. An accident which could not be avoided because of the limitation of a disability, such as being hit by a vehicle owing to inability to retain balance or move out of the way or colliding with an obstruction due to loss of sight or balance.
2. The breaking of a prosthesis.
3. Falls through wearing a prosthesis.

2. Medical Development: This category of consequential disability is a disabling condition which develops post-discharge and cannot be ruled as having been incurred or aggravated during service, but the development of which might be related to a condition for which pension entitlement has been granted. The following cases are cited as examples:

GeneralLeg Amputation (Single Organ) *

The pensioner is receiving 50% pension for amputation of his right leg below the knee. He develops arthritis in his right knee joint, claiming that it is caused by improper body alignment, and extra wear and tear resulting from the amputation of his leg.

Leg Amputation (Paired Organs) *

The pensioner is receiving 50% pension for amputation of his right leg. He develops arthritis in the knee of his left leg, claiming that it is caused by improper body alignment and extra wear and tear resulting directly from amputation of his right leg.

The sections of the Pension Act which provide authority to grant pension in respect of the basic or initial disability are as follows:

13(1)(a) Pensions shall be awarded in accordance with the rates set out in Schedule A to or in respect of members of the forces when the injury or disease or aggravation thereof resulting in the disability in respect of which the application for pension is made was attributable to or was incurred during such military service.

28(1) Subject to the provisions of Section 13, pensions for disabilities shall, except as provided in subsection (3), be awarded or continued in accordance with the extent of the disability resulting from injury or disease or aggravation thereof as the case may be, of the applicant or pensioner.

There is no specific legislative authority for granting of pension for consequential disabilities. The Pension Commission has adopted a policy which accepts the premise that such disabilities may be the direct result of a pensioned condition. Hence, the Commission will grant pension for a consequential disability, either at the full extent of the disability or, where it is decided that the pensioned condition is only partly the cause, on a fractional basis.

* These are hypothetical cases.

General

The Commission grants pension in consequential conditions under the provisions of Section 5(1) of the Pension Act which reads as follows:

5(1) Subject to the provisions of this Act and of any regulations, the Commission has full and unrestricted power and authority and exclusive jurisdiction to deal with and adjudicate upon all matters and questions relating to the award, increase, decrease, suspension or cancellation of any pension under this Act and to the recovery of any overpayment that may have been made; and effect shall be given by the Department and the Comptroller of the Treasury to the decisions of the Commission.

This authority was cited in a letter from the Pension Commission Chairman which stated, in part: ³

Because there is no specific provision in the Pension Act for this type of ruling, the Commission has made use of its powers under Section 5(1) of the Act to provide an equitable solution in many cases where no other solution could be found. This is in line with the Commission's view that the Pension Act is to be used in a positive way for the benefit of veterans. While it is inevitable that many veterans and their Advocates find difficulty in understanding the Commission's position, I am sure that this practice forms a valuable part of pension adjudication.

The practice followed by the Commission in considering entitlement and assessment in regard to consequential disabilities was explained in the Commission Chairman's letter, as follows: ⁴

When these claims are examined, it is found that often the pensioned condition is not the sole cause of the disability in question and may be only a minor contributing factor. The degree of relationship ranges from total to nil, with continuous variation between the extremes.

Total relationship can be illustrated by a pensioned knee injury which is followed, after some years, by arthritic changes in the knee joint. The sequence is common and almost universal. All other joints are free of arthritis. A total relationship between the injury and arthritis of the knee is conceded, often without the formality of a ruling.

General

Partial relationship can be illustrated in the case of diabetes and arteriosclerosis. Diabetes mellitus, although known to be a hereditary condition, may be ruled incurred during service on the grounds that it was first diagnosed at that time. Some 25 years later, at age 55, the pensioner may develop clinical evidence of cardiovascular disease, diagnosed arteriosclerotic. He claims entitlement. As the arteriosclerotic changes start quite early in life, the condition was doubtless present in subclinical form prior to enlistment. It could not be ruled incurred during service and, in the absence of any relevant disability for 25 years after service, it could not be ruled aggravated during service. Neither could arteriosclerosis be ruled totally consequential on diabetes, especially in a person having a strong family history of cardiovascular disease, overweight, smoking heavily, and with various other contributing factors which cannot be deemed service-related. Nevertheless, as clinical arteriosclerosis is known to be commoner in diabetics than in non-diabetics, the Commission may, on the facts of the case and on the basis of expert opinion, find that the pensioned disability may have accelerated the arteriosclerotic process to some degree. The relationship, though perhaps of minor degree, may be found sufficient to award entitlement for x /fifths of the arteriosclerotic disability, which is the fraction of the disability estimated to be a consequence of diabetes.

REPRESENTATIONS AND EVIDENCE

The representations made to your Committee under the classification of "consequential disabilities" referred only to those categorized herein as the type resulting from "medical development". Notwithstanding, your Committee agreed that it should examine the policies and practices of the Commission in regard to both the "physical injury" and "medical development" types of consequential disability. Accordingly, your Committee reviewed Commission files and discussed the matter with medical and other personnel both within and outside of the Commission, and reported thereon to your Committee. This, together with the information from veterans organizations as set out hereunder, provided your Committee with fairly complete knowledge of the subject.

The War Amputations of Canada

The War Amputations of Canada contended that amputation can result in consequential disabilities of the "medical development" type. In a prepared brief, this Association stated:⁵

A survey of our members would indicate that, in the policies of the Commission, the following are matters of concern to us:

- (1) The extent to which the Pension Medical Examiners recognize severity of these problems among amputation cases varies from district to district.
- (2) Many of our members have had difficulty in establishing entitlement for conditions which appear to be the direct result of amputation.
- (3) No attempt has been made in Canada to study the effect of amputation upon orthopaedic, medical, or nervous conditions, similar to studies carried out in many other countries.

Representations and Evidence

This Association filed with your Committee excerpts from reports from France, the United Kingdom and Finland, containing information dealing with the sequelae of amputation. This information indicated varying medical consequences as the after-effect of amputation. The brief from the War Amputations representatives stated there were no conclusive results concerning the relationship between cardiovascular disease and amputation, but that there was "significant evidence which indicates the possibility of amputation as an aetiological factor" in such disease.

A study, carried out by the Finnish Medical Society, indicated that a number of related medical conditions could develop from amputation including back pain, curvature of the spine and arthritis.

The representatives of the War Amputations of Canada stated that reports which they were filing with your Committee indicated the possibility of a definite relationship between amputation and other medical conditions, and suggested that research should be carried out to determine the full effect of this relationship.

The Association's brief suggested that it was the policy of the Pension Commission to grant pension on the basis of only partial entitlement where it was decided that a post-discharge disability was the direct consequence of the pensionable condition. The brief continued: ⁶

It is suggested that this policy of the Commission is based on the assumption that the post-discharge disability would have developed notwithstanding the pension disability upon which it is consequential. Therefore, the Commission follows the policy and practice of granting only partial entitlement, on the premise that the pensionable disability is not the sole cause of the post-discharge disability, and has only aggravated the condition.

Representations and Evidence

Presumably this policy, if it is followed, is based on the Commission's interpretation of its responsibility under the broad terms of the legislation. Attention is directed to the fact that Section 28 of the Pension Act provides that pensions will be awarded in accordance with the extent of the disability, or aggravation thereof. The Commission apparently interprets the latter phrase to mean that the Commission has the sole right to decide where aggravation has occurred, and thus reduces the liability of the Commission to compensate the pensioner in the full extent of the disability.

Two cases, from the War Amputations Association brief, are recorded herein, in illustrations:

FILE: 65/3

This veteran suffered amputation of his right leg following an injury during service on the High Seas with the Royal Canadian Navy during the Second World War.

In 1960 the man developed a condition of osteoarthritis in his left knee. An application was made to the Canadian Pension Commission for an entitlement ruling, based on the premise that the arthritis in the left knee was consequential upon the amputation on the right side. The Pension claim was based partly on the statement that his left knee was swollen and required treatment at the time of the accident which resulted in the amputation of his right leg. He also stated that his left knee ached continually, presumably from the effects of taking all his weight on his left leg.

The Medical Consultant in the Department of Veterans Affairs stated that there was a condition of osteoarthritis in the left knee joint.

The case was prepared for a pension award by the Pension Medical Examiner, supported by a statement by Dr. Charles Hollenberg, Orthopaedic Consultant to D.V.A., which contains the following:

In any event, the amputation on the right side, could easily produce aggravation of the left knee. It is considered that the osteoarthritis is directly related to the cause of the defect in the lower end of the femur. (left side).

Representations and Evidence

The Pension Commission ruled on August 30 1961

Arthritis, left knee, aggravated by the pension condition of amputation right mid-thigh to the extent of 2/5ths over the post-discharge period, such aggravation to be pensioned.

The actual award in effect for this veteran now read as follows:

- | | |
|--|-----|
| (1) Amputation right thigh mid. resulting from traumatic venous arterio thrombosis left leg incurred during service in a theatre of actual war | 10% |
| (2) Arthritis - left knee, aggravated by the pension condition of amputation right mid-thigh to the extent of 2/5ths over the post-discharge period. Such aggravation to be pensioned 2/5ths x 10% | 4% |
| Total: | 14% |

The War Amputations delegation suggested that the arthritis in the left knee was the direct result of the amputation of the right leg and that the pensioner should have been entitled to the full 10% which was assessed as the extent of disablement from the arthritis.

The second case, from the brief follows: 7

CASE 65/7

This man was pensioned for a below-the-knee amputation - right leg, varicose veins and ulcer in the left ankle.

He developed a condition of spondylolisthesis (placement of one vertebrae over another). The onset of this latter condition was 1964, but there was a history of pain in this region previously.

His pensionable condition resulted from a serious motor-cycle accident. In submitting the case for consideration, the Pensions Advocate, D.V.A., attempted to establish that the back condition was a direct result of the motorcycle accident. The Pension Commission did not accept supporting evidence, stating that it was of a 'lay' nature and "cannot be used to attribute service aggravation of the claimed for condition".

Representations and Evidence

The Commission granted entitlement on the understanding that the spondylolisthesis had been caused by the pensioned condition, (i.e. amputation from fracture of the right femur, right tibia and fibula) but approved aggravation on a one-fifth basis only.

His entitlement now is as follows

Below knee amputation with involvement of muscle	=	70%
Varicose veins and ulcer left ankle	=	15%
Spondylolisthesis - 1/5 of 10%	=	2%
Total		= 87%

The Association suggested that, in view of the relationship between the amputation and the condition of spondylolisthesis, the pension for the latter should have been awarded at the full 10%, rather than on a 1/5th aggravation-basis.

The brief suggested that the policy of the Commission in granting partial entitlement in cases of consequential post-discharge disability raised two basic issues, as follows: 8

- (1) Comparison with pre-enlistment disability: The Pension Act Section 13(1)(c) provides that no deduction shall be made, where it is adjudged by the Commission that part of a disability was pre-enlistment in origin, provided that the member of the Force served in a theatre of actual war. However, where a post-discharge disability occurs which is consequential upon a pensionable disability, the Pension Act makes no provision to permit the Commission to grant full entitlement, even in cases where the pensioner served in a theatre of actual war.
- (2) Extension of Benefit of Doubt: In most cases where a post-discharge disability is consequential upon a pensionable condition, the medical evidence will indicate an area of doubt in regard to the question of whether or not the post-discharge disability is wholly consequential upon the pensionable disability or has merely been aggravated thereby. It appears to be the practice of the Commission to grant only partial entitlement in such instances. It would seem, therefore, that the Benefit of the Doubt is not applied in these cases.

Representations and Evidence

The brief made two recommendations as follows: ⁹

- (1) In any post-discharge disability where the Commission deems that such is not wholly consequential upon the pensionable disability, no deduction shall be made from the total assessment, even though the Commission deems that the post-discharge disability has been only aggravated by the pensionable disability, provided that the pensioner served in a theatre of actual war; and
- (2) The pensioner should be given the Benefit of the Doubt, which should be interpreted to mean that if reliable medical opinion can be adduced to the effect that the post-discharge disability is in a reasonable degree related to the pensionable disability, the pensioner should be given full entitlement.

Canadian Pension Commission In his evidence before your Committee Dr.

W. F. Brown, Chief Medical Adviser of the Pension Commission, referred to the second case in the brief from the War Amputations of Canada, wherein it had been suggested that a condition of spondylolisthesis should be related in its entirety to below-knee amputation. Dr. Brown stated: ¹⁰

I might point out that spondylolisthesis is a congenital, developmental abnormality of the spine. Where there is no developmental abnormality, it can be acquired only by fracturing the spine and these cases are usually referred to as 'fracture of the spine with spondylolisthesis'. The difficulty in giving full entitlement in spondylolisthesis is due to the fact that conditions such as this cannot be regarded as a direct complication of the pensionable condition..... The condition was there, and it was just aggravated by the amputation.

National Council of Veterans Associations In a supplementary submission from the Multiple Disabilities Group of the National Council of Veterans Associations, further reference was made to the question of consequential disabilities. This group suggested that spondylolisthesis could develop from what might be termed "improper carriage", even where there was no congenital condition which developed later in life, and went on to say: ¹¹

Representations and Evidence

The most important point at issue would seem to be whether or not the predominant characteristic in the development of spondylolisthesis in such cases is the congenital origin or alternatively, the fact that a person with two good legs is affected much more severely by a condition of spondylolisthesis than a person with two good legs.

To illustrate this point, may we draw the attention of your Committee to the situation of a person who loses the sight of one eye, and is left with adequate sight in the other eye. If, in a subsequent accident, he loses the sight of his second eye, he becomes totally disabled, despite the fact that in the second accident he only lost one eye.

The serious consequence of the second accident results directly from the fact that he had suffered the loss of his other eye on a previous occasion. When the same set of circumstances is applied to a leg amputation, it would appear that a condition of spondylolisthesis for a man with two good legs might be considered as a severe impairment, but where he has already lost the use of one leg through amputation the impairment from spondylolisthesis is much more severe.

It is suggested that, in applying the rule of 1/5th aggravation on the understanding that spondylolisthesis is a congenital condition which is only aggravated by the pensionable condition of amputation, the Pension Commission has disregarded the fact that, to a leg amputee, spondylolisthesis (or any disabling condition of the back or the other leg for that matter) becomes a matter of abnormal concern. For this reason, it is suggested that the Pension Commission is not warranted in restricting its assessment in these cases to partial aggravation.

It is understood that Dr. Brown implied that, except for the pensionable condition in cases of this nature, the Commission would not be able to approve any pension whatsoever for the disability which is presumed to be consequential upon or related to the pensionable disability.

It is agreed that this premise is absolutely sound. If a person who does not have a pensionable condition to which spondylolisthesis could be related, develops this latter condition, there would of course be no basis for pension of such condition under the Pension Act.

Representations and Evidence

However, where the opposite situation is true, and in fact the condition of spondylolisthesis does exist, and it can be related to a pensionable condition such as amputation, the Pension Commission would be justified in approving entitlement for spondylolisthesis at the full rate of the medical assessment of the disability involved. Stated differently, the important factor in such case, is the amputation.

We wish to point out that the rating for consequential disability is a very important matter to the seriously disabled veterans of Canada. Dr. Brown stated, before your Committee, that there was no specific provision in the Pension Act covering pensions for post-discharge conditions which are conceded to be consequential on pensionable conditions, and implied that the authority for such pensions was considered by the Pension Commission to lie in the fact that a pensionable condition was actually the cause of the consequential condition, in that the pensioned condition was worsened thereby.

This reasoning appears sound. It is suggested, however, that if there is any question concerning the authority of the Commission to award pension for post-discharge conditions which are directly consequential upon pensioned conditions, a provision should be made in the Act for such pension award.

It is suggested further that, where a member of the forces served in a Theatre of Actual War, and the Canadian Pension Commission deems that the post-discharge disability has been only aggravated by the pensionable disability he be pensioned for the full extent of the disability. This would mean that the existing provision concerning pre-enlistment disabilities, under which no deduction is made for a pre-enlistment condition aggravated during service so long as the member of the Forces served in a Theatre of Actual War, would be applicable to post-discharge conditions.

The Sir Arthur Pearson Association of the War Blind: This Association suggested in its brief that the benefit of the doubt was not being applied by the Pension Commission in considering consequential disabilities. The relevant section of the brief read as follows: ¹²

Representations and Evidence

Although our Association has not experienced lack of the benefit of the doubt in awarding a pension for blindness - with an odd exception - we have for many years been most dissatisfied with the lack of the benefit of the doubt when considering consequential disabilities. To be brief, many, many times our family doctors told us that stomach trouble, nervous conditions and many other physical ailments, were due to frustrations, lack of recreational outlets, and the nervous tuned-in tension that a blind person travels under every waking minute of every day, but results were negative, therefore, our simple solution was to ask that they grant the War Blinded, or, in fact, all 100% disabled veterans, free hospitalization and treatment for all conditions, similar to War Veterans Allowance cases. We still feel very strongly that, in order to eliminate variance of interpretations from one administrative area to another that the 100% disabled veteran should be granted free hospitalization and treatment for all conditions without having to engage in lengthy negotiations to establish whether or not his newly developed disability is consequential to all pensionable disability.

COMMITTEE RECOMMENDATIONS

(75) That the Act be amended to provide:

- (a) separate entitlement be granted for a consequential disability which is considered to have resulted from physical injury where a pensionable disability was a contributing factor; and

Consequential
Disability
(Physical Injury)

- (b) the pension for such consequential disabilities be not disallowed on the grounds that the activities and surroundings of the pensioner at the time of the accident could be considered as inappropriate, having regard to the prohibitions which may be said to apply to a person with the type of disability for which pension was in payment.

(76) That the Act be amended to provide:

- (a) separate entitlement be granted for a consequential disability which is considered to have been a medical development caused or aggravated by a pensionable disability; and

Consequential
Disability
(Medical
Development)

- (b) in the assessment of the consequential disability for pension, the factors to be taken into consideration shall include, where applicable:

- (i) The degree of aggravation of the consequential disability which can be attributed to the pensioned condition;
- (ii) Any increase in the disability of the single organ, where its function has been affected by an additional disability regardless of whether the additional disability is consequential upon the original disability.
- (iii) Any increase in the disability of paired organs where one has been affected by a pensionable disability regardless of whether the disablement of the other organ is consequential upon the disability involved in the first organ.

Committee Recommendations

(77) That, where a consequential disability is deemed to have been caused by a pensioned disability for which an assessment is available under the Table of Disabilities, the assessment for the consequential disability should carry a separate entitlement, and should not be considered as part of the assessment for the original disability.

Separate
Entitlement

(78) That the Act be amended to provide that where a second disabling condition occurs which is not attributable to or consequential upon a pensioned condition, and the effect of this second condition is to worsen the extent of the pensioned condition, additional pension be paid for the latter.

Pension to be
Paid For New
Disabling
Condition, I
Though N
Consequential
if Effect is
Worsen Pensi
ed Condition

(79) That where a pension is awarded for no useful vision in one eye and the pensioner loses the sight of his other eye, pension be awarded at the rate for total blindness, even though the loss of sight in the second eye is not consequential upon the pensioned condition.

Loss of Si
in Second
to Result
Pension for
Total Blind
ness, Even
Though N
Consequent

COMMENT

Consequential Disabilities

It would appear that clarification through legislative amendment would be useful in regard to pensionability for consequential disabilities of the "physical injury" type. The Pension Commission deals with applications for pension for such disabilities on the basis of a general policy developed by the Commission and its predecessors over the years. Your Committee considers that some amendment in these policies is required, that they be set out in legislation, and possibly amplified by the issue of pension law directives.

In cases of this nature pension administrators have taken into account the prohibitions involved in a pensioned disability. In this respect, the Royal Commission on Pensions and Re-establishment reported as follows: ¹³

The Pensions Board does not take the position that, in awarding pension for a service disability, it thereby compensates for everything which may result therefrom. It is ruled that the pension compensates the soldier for the normal loss of working capacity and for the things which may happen to him in what would be the usual every day life of a man in his condition. But the intervention of some unforeseen and unusual event or combination of circumstances may give rise to increased liability. The question is whether the original disability was a contributing factor and, secondly, whether the activities and surroundings of the pensioner, at the time of the accident, were safe for a man suffering from his disability. If these two essentials are present, pension will be granted. But if either the new disability was not the result of the old, or, if the pensioner was running a risk, which one in his physical condition should not have taken, pension will be refused. The pension awarded for the original disability is supposed to have compensated him for refraining from doing certain things which a normal man without his disability could safely have done.

Comment

In a ruling of the Pension Appeal Court on August 15, 1934, Mr. Justice Hyndman stated as follows:¹⁴

A disability is the loss or lessening of the power to will and do a normal physical or mental act. Disabilities may be actual inabilities or they may be imposed inabilities - prohibitions. Among the inabilities may be found the loss of an organ or member or of some or all of its functions in whole or in part, or the loss or limitation of the action of muscles or of movement in joints. Prohibitions are a limitation of activities imposed by these inabilities which the pensioner suffered and for which he is paid pension. The prohibition may affect a part of the body only or the whole body and may take the form of necessity for avoidance of exposure to physical stresses or to certain places of residence. The wider the range of prescription, the greater the disability and the greater the pension. The compensation which a pensioner receives is owing to his inability to do certain acts, engage in certain places of residence which requires the doing of such actions.

In the step-ladder case, referred to on page one hereof, the ruling of the Commission was as follows:

The Board of Pension Commissioners considered that in climbing to the top of the step-ladder he disobeyed the prohibition imposed by his pensionable disability.

In the slippery sidewalk case, referred to on page one hereof, the decision was as follows:

From the evidence on hand, I think I would decide that part in his favour; that is, that merely being out walking under those conditions would not be taken as one of the prohibitions imposed on him by reason of his pension. The evidence would not suggest that the walking was dangerous just because there was some fresh snow on the ground.

These decisions were made by the pension administrators, acting on their own interpretation of the authority conferred in the section of the Act¹⁵ which gives the Commission "full and unrestricted power" to deal with pensions. Your Committee finds no fault with this. Also, cases of

Comment

this nature were not a matter of complaint before your Committee. It is urged, however, that provision be made in the legislation for payment of pension for consequential disability which arises from physical injury where the cause can be related to a pensionable condition.

It would seem particularly important to provide authority to deal with consequential disabilities arising out of a physical injury because (as will be seen from the information given here) the Pension Commission does on some occasions, approve pension where it is deemed that a pensionable condition has been the direct cause of the physical injury which led to a consequential disability. In some instances, however, the Commission or its predecessors have seen fit to deny entitlement for a consequential disability arising from physical injury claimed to have been caused by a pensionable disability, on the basis that the payment of pension for a pensionable disability implied certain prohibitions upon the recipient in regard to his taking unnecessary risks.

In the view of your Committee, pension should be not disallowed on the grounds that the existence of a pensionable disability implies certain prohibitions against the pensioner performing acts which might involve unnecessary risks which could lead to consequential disability. Your Committee believes that it is not psychologically sound to place upon a disability pensioner any prohibition regarding the activities in which he may engage. Rehabilitation demands encouragement of the pensioner to overcome his disability; hence, it does not seem reasonable that the pensioner should be given encouragement on one hand, and on the other hand, be deprived of pension if he incurs further disability or death by reason of his taking risks which are commonly taken but which could be considered inappropriate, only because of his pensionable condition.

Comment

The denial of pension coverage in such circumstances could well act as a deterrent to a pensioner who might otherwise surmount his physical handicap and attempt to undertake recreational, household and other activities which are not denied those without physical disability.

Consequential Disability (Medical Development Type)

The requirement to make legislative provision to pay pension for a "medical type" consequential disability is evident. The Commission has been approving pension applications of this nature under the somewhat tenuous authority of Section 5(1) of the Act. Your Committee commends the Commission for taking this initiative, but suggests that specific authority in regard to such pension entitlement should exist in the Act.

Your Committee believes that pension should be paid for a consequential disability of this type where it can be determined that such has developed as the direct consequence of, or has been aggravated by, a pensioned condition. It is understood that the Pension Commission has been approving pensions on this basis. However, in the absence of legislative direction, the Commission has felt it necessary to limit the pension to that degree of partial aggravation which the Commission, in its judgement, considers to be the consequence of the pensioned condition. This is satisfactory, so far as it goes. There might, however, be other factors which should add weight to the assessment of the disability involved, as explained hereunder:

Single Organ: It is realized that the Commission must exercise its discretion in deciding the degree of aggravation which can be attributed to the pensioned condition. Your Committee proposes, however, that in assessing the consequential disability, the Commission should take into

Comment

account not only the extent of the disability itself, but also any additional factor which may be present by reason of the fact that consequential damage in a single organ, the disablement of which has been recognized in a previous entitlement grant, may be more severe than similar damage in an organ which was not subject to previous impairment.

Arthritis in a knee joint might carry an assessment of say 10%. If the person has suffered amputation of the leg below the arthritic knee that condition of arthritis would presumably be more disabling than in a person who had the same condition in a leg which had not been partially amputated.

Paired Organs: Your Committee suggests that, where applicable, consideration should be given to a "paired organs" factor. This suggestion is based on the proposition that, where two organs are disabled, the disability in any one of those organs is more serious than if only one organ was involved, by reason of the fact that the two organs are interdependent on each other. Referring to the case cited by the War Amputations * in which a man with one amputated leg develops arthritis in his remaining leg, it seems obvious that this condition of arthritis is more severe than if the man had one physically-sound leg.

Accordingly, your Committee considers that legislative provision should be made under which the Commission could approve a comensurate increase in assessment for consequential disability of the "medical development" type. Under its interpretation of the Pension Act at present, the Commission can approve assessment for a consequential disability only on a fractional basis, if it is deemed that the consequential disability is related only in part to a pensionable condition.

* See Case 65/3 on page 616 hereof.

Comment

Your Committee believes that an amendment to the Act would be justified in this respect, so that additional consideration could be given where a consequential disability in an organ whose function is partly dependent upon another part of that organ (or upon a paired organ) for which pension has already been approved, is greater than if the organ (or a paired organ) were medically sound.

New Zealand Act: Your Committee, in carrying out research in regard to pension legislation, noted that under the New Zealand War Pensions Act, 1954, the upper and lower limbs are classified as "paired organs" and if a veteran has the total and permanent loss of one limb, he is automatically entitled to pension and treatment for any disability arising in the opposite limb for any cause.

Combinations of Impaired Organs: For the purposes of a provision regarding paired organs, your Committee deems that such should include not only two lower or two upper limbs, but any combination of organs whose functions may be considered as directly related to each other. Examples are:

- An arm and a leg
- The spinal column and an arm or leg
- Paraplegia and related disabilities
- Blindness and related disabilities
- The systemic organs, where interdependent.

Pension Commission Rulings: Your Committee noted a number of decisions of the Pension Commission in which entitlement was approved for a condition which was related to a pensioned condition, but no increase in pension resulted. One of these was cited in the brief from the War Amputations of Canada. *

* See Case 65/7 on page 617 hereof.

Comment

A Commission ruling in another case is given hereunder: 27

1. Gunshot Wound, resulting in left mid-thigh amputation 70%
2. Gunshot Wound, right lower leg 3%

Incurred during service in a theatre of actual war.

C.P.C. First Hearing 21.6.44.

3. Olecranon, Bursitis, right 2%

Consequential upon the pensionable disability of Gunshot Wound, resulting in mid-thigh amputation, and to carry the same entitlement. C.P.C. 23.4.64.

The Pension Commission approved an assessment of 2% for the bursitis in the olecranon (elbow) of the pensioner, such having been injured in a fall. It is to be noted that the pensioner cannot wear an artificial leg due to a short stump. He had requested special consideration in regard to the assessment of the disability arising from the right elbow, because of the fact that he relied on crutches for mobility. In a letter on file under date of December 11th, 1964, Dr. W.F. Brown, Chief Medical Adviser of the Commission, stated as follows: 28

Mr. _____ was examined at our Toronto District Office a few months ago and received a small assessment for olecranon bursitis, right, in addition to the 75% disability from multiple gunshot wound. This, however, did not raise his pension by one class.

The question of whether or not he should wear a prosthesis rests with Mr. _____ and the Prosthesis Services.

It would appear, in the view of your Committee, that the severity of bursitis in the right elbow of this pensioner was increased because the pensioner must use crutches for mobility, as he cannot wear a prosthesis. The fact that this pensioner has gone without an artificial

Comment.

leg for more than 20 years would seem to resolve the question of whether or not he could successfully use a prosthesis to assist in overcoming the disability of amputation. An increase in the disability by reason of the fact that it is in an organ, the use of which is paired with his pensionable disability, should entitle him to the fullest possible consideration in the matter of assessment.

Additional Disability Need Not be Attributable or Consequential

The existing practice of the Commission, in regard to a consequential disability, is that where an additional disability affects the functioning of an organ which has been amputated or impaired by reason of a pensionable disability, additional pension may be paid for the additional disability only if it is ruled to be consequential upon the pensionable disability.

This practice can perhaps be more easily understood by using an actual case in illustration. A classic pension situation arose ¹⁹ where a veteran was in receipt of 40% pension for gunshot wound of his left arm, and subsequent to his release from the service, his right hand was amputated as a result of an accident which bore no relation to his pensionable condition. An application was made for an increase in the assessment of his left arm by reason of the fact that the disability therein had been increased as, with the loss of his right hand, he had to make more use of his left arm. The Pension Commission ruled that no increase could be granted, as the loss of the right hand was in no way related to the disabled condition of the left arm. The Commission was enabled to decide as it did, in the absence of any specific direction in the Act.

Comment

Your Committee considers, however, that the legislation should now be amended to permit the Commission to increase the compensation for a pensioned condition when, by reason of additional disability, that condition is made greater. To use the illustration cited above, the assessment for a gunshot wound of the left arm was rated at 40% at a time when the pensioner had an unimpaired right arm. At a later date, when he lost his right arm through amputation, the seriousness in the disability in his left arm was greatly increased, as it was the only remaining arm and the pensioner would necessarily have to make a great deal more use of it.

Attention is drawn to the provision in the Table of Disabilities¹⁰ which states in part as follows:

A pensioner who holds entitlement to a pension for no useful vision in one eye,* and who subsequently loses all useful sight in the remaining eye, from causes in no way related to military service will receive a 70% pension.....

It will be noted that, in this particular instance, the Commission does pay additional pension for a condition which is in no way related to military service, and is not consequential upon the pensioned condition, but limits the assessment for the additional disability to 30%, in that the pension under the Table of Disabilities, for total loss of vision in one eye is 40%, and the assessment provided in the Table of Disabilities for a pensioner who subsequently loses all useful sight in the remaining eye is increased to 70%.

Your Committee considers that, where a pensioner is in receipt of pension for the loss of the sight of one eye and he subsequently loses his remaining eye he is entitled to further pension at the rate for total blindness.

* Pensioned at 40%

Comment

The important factors in the situation of this type, in the view of your Committee, are firstly, that he is totally blind and, secondly, that if he had not lost his sight in one eye as the result of service he would still be able to see, even though he subsequently lost the sight of another eye.

CONSEQUENTIAL DISABILITIES

REFERENCES

1. Canadian Pension Commission Medical Advisory Branch, Subject File 80-1, Page 4.
2. Ibid. Page 5.
3. Letter from T. D. Anderson, Chairman, Canadian Pension Commission to Secretary, the Committee to Survey the Organization and Work of the Canadian Pension Commission, dated October 24th, 1966, Paragraph 8.
4. Ibid, Paragraphs 3, 4, and 5.
5. Proceedings of Committee Sessions, Volume II, Page K-59.
6. Ibid, Volume II, Page K-63.
7. Ibid, Volume II, Page K-65.
8. Ibid, Volume II, Page K-66.
9. Ibid, Volume II, Page K-66.
10. Ibid, Volume V, Page AA-28.
11. Ibid, Volume VI, Page FF-30.
12. Ibid, Volume I, Page B-19.
13. Report, Royal Commission on Pensions and Re-establishment 1922-24, Sessional Paper 203A, Page 55.
14. Canadian Pension Commission Medical Advisory Branch Subject File 80-1
15. Pension Act, Section 5(1).
16. "Research on the Effects of Amputation; Dr. McDonald Wilson, Medical Officer in charge of Treatment, War Pensions Department of New Zealand, issued by War Veterans Federation, October 13, 1966.
17. Canadian Pension Commission decision dated, April 23, 1964, see Committee Case File No. 2.
18. Department of Veterans Affairs, Veterans File B-53971.
19. Minutes, General Meeting, Canadian Pension Commission.
20. Canadian Pension Commission, Table of Disabilities, Page 14(a).

ATTENDANCE ALLOWANCE

GENERAL

The Pension Act provides for a special allowance designated as "Attendance Allowance" under Section 30(1) of the Act, which reads as follows:

- 30(1) A member of the forces who is totally disabled and helpless, whether entitled to a pension of class one or a lower class, and who is, in addition, in need of attendance, is entitled, if he is not cared for under the jurisdiction of the Department of Veterans Affairs in a hospital, to an addition to his pension, subject to review from time to time, of an amount in the discretion of the Commission of not less than four hundred and eighty dollars per annum and not more than three thousand dollars per annum.

The amount of Attendance Allowance is at the discretion of the Pension Commission. The Table of Disabilities provides guidance in this regard, as follows: ¹

Attendance Allowance as provided in Section 30 of the Pension Act, Chapter 207, RSC 1952.

Explanatory Notes and Instructions

Before an award of Attendance Allowance may be made it must be established:

- (a) the claimant is a pensioner,
- (b) totally disabled,
- (c) helpless,
- (d) in addition, in need of attendance.

Should a claim meet these requirements, an award may be made but in no case will such be less than the minimum, per annum, as authorized in the Statute.

The following necessities are accepted by the Canadian Pension Commission as placing a pensioner "in need of attendance" as referred to in the Statute:

- (a) dressing and undressing, including the keeping of oneself ordinarily presentable, washing, shaving, bathing, etc.

General

The adjustment of special appliances which by reason of disability cannot be done without assistance - this is not to include the adjustment of appliances which normal individuals are unable to adjust without assistance, such as supporting belts, lacing at the back, etc.

- (b) Feeding oneself .. as prohibited by loss of both hands or arms, or extreme weakness
- (c) Attending to wants of nature
- (d) Ability to get out of doors, and to take sufficient exercise to maintain normal health
- (e) Protection from danger incident to ordinary environment, as in the case of the insane in whose hands ordinary articles may be dangerous to themselves; or severe epileptics who are constantly liable to injury from onset of convulsions in situations where they may fall from a height, or in the way of moving vehicles.

The Table provides four classifications for an award of Attendance Allowance for a pensioner whose requirement for attendance is the result of his pensioned condition. These are:

- CONSTANT -
- (a) A bedridden case or equivalent who requires constant nursing care and attendance in his home\$3,000.
 - (b) Paraplegics with complete cord lesion..... 3,000.

ALMOST CONSTANT -

Cases totally disabled and helpless who require a great deal of attendance, particularly during the day.....\$2,750.

INTERMITTENT ATTENDANCE - DAY AND NIGHT

This degree of attendance is self-explanatory..\$1,500.

OCCASIONAL ATTENDANCE DURING THE DAY

This degree of attendance is self explanatory..\$ 480..

General

The Table provides also Attendance Allowance for a pensioner whose requirement for attendance is not the result of his pensioned condition. This provision reads as follows: ³

A member of the forces who is in receipt of disability pension of Class one or a lower class, including Class 21 and who is helpless within the meaning of the Statute as a result of SOME OTHER DISEASE OR INJURY WHICH WAS NOT INCURRED ON, OR ATTRIBUTABLE TO, OR AGGRAVATED DURING SERVICE, such pensioner, in the discretion of the Commission may be awarded an allowance under the provisions of Section 30 of the Statute. In no case will the award of attendance allowance exceed that which would be paid had helplessness resulted from his pensionable condition.

The degree of attendance must be determined in the first instance, following which an examination into all the circumstances will determine as to whether or not the maximum rate for that degree will be paid.

Provision for continuation of Attendance Allowance to blind pensioners who are hospitalized for treatment from the Department of Veterans Affairs is set out in Section 33(3) which reads as follows:

- 33(3) Notwithstanding subsections (1) and (2), any addition to pension granted under subsection (1) of Section 30 to a member of the forces who is blind shall be paid during the time he is an in-patient under treatment or care from the Department.

Provision for continuation of Attendance Allowance for paraplegics while on strength of the Department of Veterans Affairs for treatment is set out in Section 40 of the Treatment Regulations which reads as follows:

- 40(1) An allowance, in addition to any other allowance that may be paid under these Regulations, may be paid by the Department to a veteran or qualified person who
- (a) is suffering from paraplegia; and
 - (b) immediately prior to his admission to a hospital for examination or treatment pursuant to these Regulations was receiving an addition to his pension pursuant to subsection (1) of Section 30 of the Pension Act.

General

- (2) Payment of the Allowance described in Subsection (1) shall not continue for more than two months from the date of admission of that veteran or qualified person to hospital and the rate thereof shall not exceed the amount being paid in addition to his pension pursuant to subsection (1) of Section 30 of the Pension Act.

The Pension Commission, by policy direction, has decided that age in itself cannot be taken into consideration in regard to Attendance Allowance.

This was enunciated at a general meeting of the Commission as follows: ⁵

Age has never been a determining factor in qualifying for an award of Attendance Allowance, the question of need of attendance being decided irrespective of the pensioner's age.

The following statistics * indicate the number of pensioners receiving Attendance Allowance, the rates in payment and the annual liability as of August 15, 1966 as furnished by the Pension Commission in a letter to your Committee dated November 30th, 1966.

<u>Number of pensioners</u>	<u>Rates in payment</u>	<u>Annual liability</u>
126	\$ 480	\$ 60,480
82	600	49,200
1	675	675
104	720	74,880
1	840	840
145	900	130,500
59	960	56,640
2	1,080	2,160
181	1,200	217,200
3	1,260	3,780
26	1,440	37,440
357	1,500	535,500
1	1,560	1,560
325	1,800	585,000
15	2,000	30,000
1	2,087	2,087
123	2,100	258,300
1	2,220	2,220
1		
177	2,400	424,800
2	2,700	5,400
144	2,750	396,000
181	3,000	543,000
<u>2,058</u>	Not applicable	<u>\$ 3,419,932</u>

* Statistics compiled Treasury Office Records and Statistics Section.

REPRESENTATIONS AND EVIDENCE

Canadian Paraplegic Association: This Association made the following recommendation in regard to Attendance Allowance: ⁶

Continuation of Attendance Allowance to a paraplegic or quadriplegic pensioner during periods of hospitalization for active treatment from time to time as required, for the full duration of any period of treatment.

Under the Pension Act, Attendance Allowance ceases when a recipient is hospitalized under the auspices of the Department of Veterans Affairs. Those in receipt of Attendance Allowance by reason of blindness are specifically excluded from this provision in accordance with Section 33(3) of the Act. Those suffering from quadriplegia and paraplegia are paid a special allowance under D. V. A. Treatment Regulations, such being equivalent to Attendance Allowance for a period of two months following hospitalization.

The representatives of the Canadian Paraplegic Association considered that the Attendance Allowance (or its equivalent) should be continued for the full duration of any period of hospital treatment. In this respect Mr. A.C. Clarke, one of the Association's representatives, stated as follows: ⁷

Well, for those paraplegics and quadriplegics who live out of hospital, we feel that Attendance Allowance is used in large part to provide an environment within which the individual can function. This may be special arrangements in his home; it may be the part-time employment or casual help to enable him to maintain himself and his place, and we feel that when a person is admitted to hospital for treatment of a temporary nature, and when I say "temporary", I am thinking of a period of treatment which may extend over a period of months, he can't in this period of time divest himself of this special environment which he has had to provide at considerable expense, because he is looking forward to going back to it.

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In regard to the usual length of stay in hospital, Mr. G.K. Langford, Q. C., Managing Director of the Association, stated: 8

It is quite possible for a paraplegic acquiring a pressure sore to be hospitalized for a year or more before that can be cleared up; it is not just a case of going in with a high temperature and battling the fever down with antibiotics.

In speaking of the impracticability of reducing this allowance after a period of two months, Captain John Counsell, Association President, stated: 9

Sir, the help in most cases is the family and the house they live in, and the automobile they must have to go any place. It is not a question of a car being a luxury; it is an absolute necessity if you are going to be active. You can't take public transportation; you have to have a car. All that continues, the expenses aren't reduced that drastically. Now, I suppose you could put a means test on it; I don't think that is necessary and I don't think it is desirable.

The Paraplegic Association representatives felt that their situation was similar to the blind and suggested that provision be written into the Act to provide similar coverage to that for the blind.

The Sir Arthur Pearson Association of the War Blind: This Association filed with your Committee a copy of a representation made to the Chairman and Members of the Canadian Pension Commission under date of January 30, 1961, dealing with the disability of blindness. This submission was the basis of a request that the totally blind should receive the maximum Attendance Allowance. At that time the maximum was \$1,800. per annum and the amount received by the totally blind was \$1,440. The present maximum is \$3,000. and the Table of Disabilities provides Attendance Allowance

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for the totally blind of \$2,750. Captain Fred Woodcock, Secretary of the Association, stated that he had no wish to make invidious comparisons but pointed to the fact that the Attendance Allowance for the paraplegic was at the maximum of \$3,000. Comparing this with the situation of the War Blind, he said: ¹⁰

We just disagree with the placing of the totally blind, at \$250. below that of our paraplegics, of cord lesions, etcetera, and I might add, sir, this is not only our own opinion....No, but we do feel that the totally blind should be in that exact same category, and we arrive at it by many ways, and they usually counterbalance each other, the physical discomforts, etcetera, that a paraplegic has to go through, etcetera, to start his day, to make him independently mobile, which he can by having accomplished all these things, and I wouldn't want to trade places with him...by the same token it is an entirely different way of life than our own, and the only way we can arrive at it, sir, is to put down just for one example, all the recreational outlets that are available to any man, whether it is the camera, whether it is the sketching brush, the pencil, the ability to pick up anything and read, to do a hundred and one things, whether it is the racquet sports, and I would suggest that if anyone in this room is interested now sometime that they actually list all the racquet sports down one side of a piece of paper, the rifles, the shotguns as complete as you can make it, then put across the top the various disabilities, and you will end up with a graph if you come downthere and say: "Can this man do this with this kind of disability?" "Yes, he can." "Can the blind do it?" "No, he can't," and you will find if you take that column under Blindness, under total blindness, that you are going to have a column full of ticks, with one or two exceptions, and this is the only way we can compare disabilities.

Mr. W. Mayne, an executive officer of the Sir Arthur Pearson Association of the War Blind, raised the question of Attendance Allowance for the blind group with guiding vision. The Table of Disabilities provides that, where blindness is assessed at 100%, as it is in the case

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of the blind with guiding vision, Attendance Allowance of \$600. per annum may be paid. Mr. Mayne considered that this \$600. was not an "equitable allowance" for persons in that category.

Multiple Disabilities Group of the National Council of Veterans Associations

The brief presented by these representatives of the National Council suggested that Attendance Allowance should not be considered as pension. This brief dealt mainly with the assessment for multiple disabilities * and the information therein concerning Attendance Allowance was placed before your Committee as a means of suggesting that additional pension for a multiple disability pension should not be paid in the form of an Attendance Allowance. The relevant information from the brief is quoted hereunder: ¹¹

It may be argued that the Pension Commission can award attendance allowance as a means of reimbursing the multiple disability casualty over and above the pension paid for 100% disability. The attendance allowance however, is in effect an expense allowance paid to a pensioner to help offset the added costs of personal services required because of his disability. It is encumbered income and not to be confused with compensation for the disability itself. Attendance allowance is a discretionary allowance payable to any pensioner but having no direct relationship to the extent of the pensionable disability. There are cases on record where a 5% pensioner quite properly receives maximum attendance allowance, not because of his pensionable disability, but because of non-pensionable conditions incurred in civilian life.

National Council of Veterans Associations in Canada: The National Council brief contained a recommendation that Attendance Allowance be continued for all classes when a pensioner is in hospital. The proposal was made in the following terms: ¹²

* See Chapter 14, "Multiple Disabilities"

REPRESENTATIONS AND EVIDENCE

That payment of attendance allowance under Section 30 of the Pension Act be continued without reduction during the time that the recipient is detained in hospital under treatment. The attendance allowance is in effect an expense allowance paid to a severely disabled casualty to help offset the added cost of living with his disability. Seldom do these costs take the form of a full-time attendant nor would the attendance allowance be adequate to pay for such help if such an arrangement were feasible. Instead the disabled pensioner must make living arrangements that minimize the impact of his disability. This often includes more expensive living accommodation to permit living with a wheel-chair or crutches. It may include the cost of a housekeeper. Most living arrangements cannot be suspended when the pensioner goes into hospital if they are to be picked up again when he is discharged. The costs are continuous. The mortgage payments or the apartment rent must be met. The housekeeper, cleaning lady or handyman's services must be retained. While a wife may be relieved temporarily of providing personal care for her husband, she is not likely to be able to take short term employment to maintain the family income. Under Section 33(3) of the Pension Act, attendance allowance for the blind is paid while the blind pensioner is an in-patient under treatment. For the paraplegic, the allowance is suspended when he is admitted to hospital although an equivalent allowance is paid to him through D.V.A. treatment services but for a period of two months only. We suggest that the Act be amended to provide that the attendance allowance be paid in full during the time that the recipient is detained in hospital under treatment.

In answer to a question as to the difference in the application of Attendance Allowance for the blind, the paraplegics and the double amputee, Mr. G.K. Langford, Q.C., speaking for the National Council, stated as follows: ¹³

The difference appears to be an administrative one. The blind have certain services written into the Act; we (the paraplegics) have certain limited provisions written into the Treatment Regulations of the Department. No provision is made for other groups, so far as I know. We think they should be all treated alike and it should be written into the Act.

These have been dealt with piece-meal, in the past, we think not satisfactorily, and we think it should be cleaned up, put into the legislation; and any recipient of Attendance Allowance should be paid in full while he is detained in hospital under treatment.

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The War Amputations of Canada: This Association, whose membership includes persons who have lost total eyesight for causes arising out of military service, dealt extensively with the question of Attendance Allowance for the war blinded, and suggested it was necessary to review the amount of Attendance Allowance paid to those veterans who are pensioned for the loss of total eyesight with a view to having this increased from the present \$2,750. to the maximum allowance under the Act of \$3,000.

The brief suggested that full cognizance had not been taken of the need for assistance of another person or persons in the daily life of the totally blind and provided information from a study carried out by the Association, as follows: ¹⁴

Impact of Television: The television set had complicated the problems of the war blinded as they could not enjoy this medium of education and entertainment; also it has a serious affect on the blind person's relations with sighted persons in that the watching of television was not an experience which could be shared by the sightless and sighted persons.

The Jet Age: What was termed the "speeded up" process of living had produced complications for a blinded person as he was deprived of the personal use of many modern conveniences (automobiles, pleasure boats, etc.) Dependence of the modern age upon conveyances and appliances which require the faculty of sight indicated a serious handicap for the war blinded.

The Role of the Spouse: The wife of a blinded person must necessarily devote considerable time and energy to the care of her husband, at the sacrifice of other social contacts and interests of her own. Also, because of this requirement she was unable to engage in outside employment. This deprived the family of additional income while the husband was alive. It also affected the earning potential of the wife, should the husband pre-decease her.

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Employment of the Blind: A survey had shown many of the members were employed as canteen operators. Many were employed in low paid occupations of relatively minor responsibility. The ability of the blind persons to compete in the labour market (with automation, labour saving devices and the dependence on correspondence and written instructions) added to the difficulties of the blind.

The brief examined the relationship between the problems of the war blinded and the qualifications required in the Table of Disabilities for Attendance Allowance. This information is set out below in an abbreviated form: 15

- (a) Dressing and undressing, including the keeping of oneself ordinarily presentable, of washing, shaving, bathing, etc.

The blind were stated to be at an extreme disadvantage in this regard, as evidenced by reports of sighted members of the Association who had accompanied blinded persons on travel, and had attended them in their homes.

- (b) Feeding oneself - as prohibited by loss of both hands or arms or extreme weakness.

The brief stated that the blind would not qualify under this qualification as set down in the Table of Disabilities. The brief suggested, however, that cognizance had not been taken of the special problems of the blind and in particular with regards to the preparation of meals.

- (c) Attending to wants of nature.

The brief suggested that, in assessing this requirement in the Table of Disabilities, the Pension Commission gave full weight to the difficulties faced by a pensioner who had lost the use of arms or legs but had not understood the problems of the blind in this regard. The brief stated that the difficulty for the blind may come in the first instance, in locating the facilities. Also the question of embarrassment and sensitivity were important. While a blinded person may be able to use facilities in his own home with little or no attendance, when in a strange environment he is completely dependent on the assistance of others.

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- (d) The ability to get out of doors and to take sufficient exercise to maintain normal health.

The brief suggested that the movements of the blind in this category were "extremely limited". The brief stated that sighted persons had been conditioned to "marvel at the abilities of the blind to negotiate traffic", but the severity of the disability was greatly underrated, perhaps because of the insistence of the blind themselves on maintaining their independence. The brief stated that this was a worthy and necessary objective and that a close study of the situation would indicate that blind persons were severely handicapped in moving about outdoors without the assistance of a sighted person.

- (e) Protection from danger incident to ordinary environment.

The brief suggested that the risk for the blind in this category was a severe one, citing numerous instances including jeopardy from electric shocks, burns from open flames or heated coils and injuries sustained from falls, contact with obstructions, glass etc.

In the concluding remarks in this section of the brief, the Association stated: ¹⁶

The maximum classification in the Table of Disabilities is that of "Constant", which means in effect that the pensioner requires constant attendance. It is suggested that the Commission has failed to place the blind in this category for the simple and obvious reason that the blind themselves have been reluctant to lay stress upon their needs in this regard. This reluctance was even more pronounced when the official title given by the Commission was "helplessness allowance" which was naturally distasteful to the blind themselves.

It is considered that the "acid test" as to whether or not a blind person is in need of constant attention would be to consider his situation if he were required to live alone. A partial list of the wants, needs and requirements which he could not provide himself includes:

- Preparing meals.
- Shopping.
- General Housekeeping duties.
- Washing and ironing.
- Protection from hazards in the home.
- Personal Maintenance.
- Household Maintenance.
- Assistance with the use of bathroom facilities.

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Dressing and selection of clothes.
 Reading of mail.
 Provision of transportation.
 Safekeeping of monies.
 Banking.

A close study of the definitions used in the Table of Disabilities to set out the need for attendance appears to indicate beyond doubt that the Commission, perhaps understandably, has been thinking in terms of physical disablement of the extremities of the body. A blind person, unless a multiple disability casualty, will normally be sound of mind and limb, but his need for attendance is as great as the paraplegic or the multiple amputation case, even though such needs are somewhat different in nature.

Finally, it is suggested that the Canadian Pension Commission has placed too much emphasis on the fact that many seriously disabled pensioners have wives who are able to furnish nursing, household and personal care. Certainly, if the blind pensioner is in the position of having to hire an attendant and companion, the cost would be far in excess of the maximum attendance allowance of \$3,000. per annum. It is assumed that there is no intention in the legislation that a saving of Government funds should be affected simply because a blind pensioner has a wife who is willing to provide some of the requirements that normally should be paid for by the Government over and above war disability pension.

The War Amputations brief made reference also to certain categories of amputee as explained below: 17

Double Arm: The Association considered that the Attendance Allowance of \$2,000. was not sufficient. It was contended that a double arm amputee should be placed in the ALMOST CONSTANT category with a minimum Attendance Allowance of \$2,750. This recommendation was based on the views of the Association as expressed hereunder:

- (i) Dressing and undressing: A double arm amputee requires assistance to put on his prosthesis and for dressing, undressing, washing, bathing, etc.
- (ii) Feeding oneself: Although, with certain utensils, a double amputee can convey food from the table to his mouth, it is generally accepted that this "necessity" includes the preparation of food and other relative matters in this area.

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- (iii) Attending to wants of nature: It goes without saying that the double amputee is in need of full attendance in this regard.
- (iv) Ability to get out of doors to maintain normal health: A double arm amputee can, of course, get out of doors by himself. It is generally accepted, however, that this "necessity" includes more than the mere fact of being out of doors....and it stands to reason that the double arm amputee can participate in sports and recreation only with great difficulty.
- (v) Protection from danger incident to ordinary environment: It is felt that this particular "necessity" is misunderstood by the Pension Commission in respect to double arm amputees. Admittedly they can generally be considered as mobile, but there are many instances where the loss of arms places them in the greatest possible danger. For example, they cannot use their arms in the ordinary way to ward off crowds, animals, etc. They cannot turn off taps, open doors, unplug electrical appliances, press buttons or do many other hundreds of small things which other persons do with their arms. It is not intended to go into great detail in this area and the situation of the double arm amp can perhaps best be summed up, in respect to danger, by pointing out that without hands he cannot "grab hold" of stationary objects for support. This is something which a normal person does hundreds of times a day, going downstairs and so on.

Double Leg Amputees: The Association suggested that the Attendance Allowance requirements of the double leg amputee were similar to those of the paraplegic in many ways. Their brief stated:¹⁸

It is considered that the minimum Attendance Allowance for this category should be \$2,400 per annum. He can qualify, in all respects, under the "necessities" set out in the Table of Disabilities for qualification for Attendance Allowance. He may not be in the ALMOST CONSTANT category of \$2,750 but he is far in excess of the INTERMITTENT ATTENDANCE category of \$1,500.

The following comments may be helpful in regard to the "necessities" in the Table of Disabilities:

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- (i) Dressing and undressing: He must first get into his prosthesis. Then he requires considerable attendance in the matter of dressing and in his daily ablutions. He must be lifted in and out of bathtubs and generally requires full assistance in keeping himself presentable.
- (ii) Feeding oneself: Although he has no difficulty using ordinary eating utensils, he could not be expected to carry out the many household chores in regard to the preparation of food, and general operation of the kitchen.
- (iii) Attending to wants of nature: Many double leg amputees require considerable help in this matter.
- (iv) Ability to get out of doors: Many double leg amputees must use a wheelchair. They cannot take normal recreation and require full attendance in order to enjoy a modicum of outdoor living.
- (v) Protection from danger incident to ordinary environment: It goes without saying that the double leg amputee is in a very serious situation in this respect. His mobility in many instances is reduced to practically nil. He cannot get out of the way of automobiles, people, animals, etc. A study of his situation will bring out many other instances. It is perhaps sufficient to sum up on this point by pointing out that if he is in a wheelchair, he is at the mercy of the mobile world. If he is on crutches, he is in constant danger of falling and incurring further injury.

Double Syme's Amputation: The Attendance Allowance is set out in the Table of Disabilities for double Syme's (at the ankle) amputations, at \$600 and for one lower limb and one Syme's at \$900. In contrast, the Attendance Allowance for loss of both limbs above the Syme's but below the knee is \$1,500.

Under the date of December 22, 1964, the Pension Commission amended the Table of Disabilities to provide an increase in the assessment for the Syme's amputation from 40% to 50% (i.e., the same assessment as for a double leg amputation).

REPRESENTATIONS AND EVIDENCE

This Association pointed out that the disability known as Syme's amputation carries the same pension assessment as a below-knee amputation, having been increased from forty to fifty percent, by Pension Commission decision of December 22nd, 1964. Their brief stated: 19

It would appear, therefore, that in respect of Attendance Allowance, the double bi-lateral Symes, and the double leg amputee with one Symes and one below-knee amputation, should qualify for the same Attendance Allowance as the double below-knee amputation. It is recommended, therefore, that consideration should be given to increasing the Attendance Allowance for Symes to the same level as that paid for below-knee amputees.

Purpose of Attendance Allowance

The War Amputations of Canada suggested that there was a need to clarify the policy under which Attendance Allowance was granted. This Section of its brief is quoted hereunder : 20

Section 30(1) of the Act should be clarified, or in lieu thereof a Statement of Policy should be issued by the Minister to the effect that Attendance Allowance is not part of pension, and is awarded solely for the purpose of providing financial compensation to the pensioner where attendance is required for the performance of household and other duties which the pensioner cannot perform for himself due to physical disablement; or to compensate the pensioner for special requirements in the home, more expensive accommodation, etc.

It should also be recognized that, if the pensioner has not been required to engage the services of an attendant by reason of the fact that his wife or a member of his family performs these tasks for him, the Attendance Allowance should still be considered as encumbered income paid for the specific purpose of compensating the pensioner in respect of the financial liability created for the need for such attendance. It is necessary to consider, in such cases, if the wife or other member of the family were not required to provide attendance, such wife or other members could conceivably engage in outside employment.

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Reference is made to the wording in the Pension Act, Section 30(1) wherein it states that a pensioner is entitled to "an addition to" his pension. This can presumably be taken to mean that Attendance Allowance is not intended as part of his pension, but only as supplemental thereto. This interpretation is based on the fact that where, in the Act, additional pension is intended, it is described specifically in those words. In this regard attention is directed to Schedule A and B where pension for dependants is set out as "additional pension".

HISTORY

The first reference regarding the provision of a special allowance for attendance was in the Pay and Allowance Regulations of the Department of Militia and Defence of September 1st, 1914, which read as follows: ²¹

1914

14. To those, up to and including the rank of lieutenant, who are totally disabled and in addition are totally helpless so far as attendance to their physical wants are concerned, a further allowance may be made of an amount not exceeding \$250.00 a year, but such special allowance shall be subject to annual review.

Further provision was made in the Pension Regulations of 1916, as follows: ²²

14. To those up to and including the rank of Sub-Lieutenant (Naval) Lieut. (Militia) who are toatally disabled and who in addition are helpless so far as attending to their physical wants is concerned, a further allowance may be made of an amount not exceeding three hundred dollars a year such special allowance shall be subject to review from time to time. This allowance may, in the discretion of the Commissioners, be awarded to any totally disabled pensioner although such pensioner is not entitled to a Class 1 pension.

1916

In the original Pension Act of 1919 provision was made as follows: ²³

- 27(1) A member of the forces holding the rank of Sub-Lieutenant (Naval) or Lieutenant (Militia) or a lower rank who is totally disabled and helpless whether entitled to a pension of Class One or of a lower class and who is, in addition, in need of attendance, shall be entitled, if he is not cared for under the jurisdiction of the Department of Soldiers' Civil Re-establishment, to an addition to his pension subject to review from time to time, of an amount in the discretion of the Commission not exceeding four hundred and fifty dollars per annum.

1919

- 27(2) If such a member of the forces holds the rank of Lieut. Commander (Naval) or Major (Militia) he shall be entitled to an addition to his pension not exceeding ninety dollars per annum, and if he holds the rank of Lieut. (Naval) or Captain (Militia) he shall be entitled to an addition to his pension not exceeding three hundred and fifty dollars per annum.

HISTORY

The annotation ²⁴ prepared in connection with these sections referred only to the amounts, and provided no explanation concerning the purpose of Attendance Allowance.

The Parliamentary Committee on Pensions Regulations 1919, which was appointed under date of March 3rd, 1919, to "consider the question of pensions and pensions regulations and prepare a bill for consideration of the House of Commons" ²⁵ reviewed and "ordered extended on the records" ²⁶ a letter from Mr. E.H. Scammell, Assistant Deputy Minister of the Department of Soldiers' Civil Re-establishment addressed to the Honourable N.W. Rowell, K.C., President of the Privy Council, dealing with the basis of Attendance Allowance. This letter is reported hereunder in its entirety. ²⁷

Department of Soldiers' Civil Re-establishment

Ottawa, March 29, 1919.

The Honourable the Minister:

In view of the consideration which is now being given to the subject of pensions by the special Committee of Parliament, I desire to bring to your notice a situation which should, I submit, be dealt with by that Committee.

Owing to the fact that the term "total disability" is now given a technical meaning there may be, and often is, a decided difference between a man with a total disability and a totally disabled man. In the table of disabilities issued by the Board of Pension Commissioners there are numerous injuries which entitled a man to 100 percent pension, known as a total disability pension. In some of these the man is totally disabled, in other words cannot earn anything, while in the others his earning capacity may not be diminished at all. To illustrate - a man who has been disabled by being shot through the spine is entitled to 100 percent pension. If he is bed-ridden he may be given an additional \$300 per year, making a total of \$200 per year. If, however, he is not bed-ridden, though he cannot work at all he is entitled only to \$600. On the other hand a man who has lost all his fingers or all but one finger or both

HISTORY

hands, or a man who has lost his both hands or any two extremities, is entitled to the same pension. The result is that some men are drawing total disability pensions, who are able to earn as much as before enlistment, while others are drawing exactly the same rate who are unable to work at all.

The problem of incurables is likely to be a serious one for this Department unless adequate provision is made whereby these men can reside at their homes under the care of their relatives.

A totally disabled man with a wife and two children is entitled to \$89 per month while he is undergoing treatment by this Department if he lives in an institution, or \$113 per month, if he is residing at his own home. The same man when he is pensioned would receive \$80 per month, while living at his own home, unless he is bed-ridden, or otherwise requires the services of an attendant, when he would receive \$105. The result is that it has been necessary for this Department either to carry a number of men on strength for pay and allowances or to place them in a hospital. The latter is a much more expensive procedure and should be avoided unless absolutely necessary.

The number of men who are totally disabled is not likely to be large, and I know that it is your wish that adequate provision should be made for them and their families. I, therefore, suggest that there should be special provision made regarding pension for these men. According to the present regulations I have shown that a totally disabled pensioner, not requiring an attendant, receives \$80 per month only, for his own maintenance and that of his wife and two children. If he were dead the wife and two children would be entitled to \$62 per month, so that the man himself is supposed to live on \$18 per month. The same ratio, providing \$18 only for the man runs through the whole list, starting with the man and wife without children.

In order to meet the situation I suggest that an allowance should be made for the wife and children on the same basis as though the man were dead, as is done in the case of an insane man, and that the man himself, when living at his own home, should be granted \$50 per month for his own maintenance, or if he requires an attendant \$75 per month. Even this latter figure is a good deal less than it would cost to maintain him in a home for incurables.

Those maintained in homes for incurables should also be discharged and pensioned, practically on the same basis as an insane man. The wife and family, if any, should receive a pension equal to what they would have received if the man had been killed, and he should in addition to his maintenance be given, say \$10 per month.

HISTORY

It would be preferable for this matter to be handled by the Board of Pension Commissioners, but if any confusion would result it may be desirable for this Department to ask Council for powers to carry out the proposals.

(sgd) E. H. Scammell.

Your Committee noted particularly the view expressed by Mr. Scammell to the effect that the term "total disability" had a technical meaning and that there was a "decided difference between a man with a total disability and a totally disabled man". He used the illustration that a pensioner who was bedridden was entitled to the same 100% pension as another pensioner who had lost both his hands.

Mr. Scammell then dealt with what he called "the problem of the incurable" and stated that, if it was necessary to retain them in hospital, it would be a "much more expensive procedure" than to allow them to reside in their homes and pay them an extra allowance. He suggested that a pensioner so disabled "should be granted \$50 per month for his own maintenance, or if he requires an attendant - \$75 per month".

He then stated:

Even this latter figure is a good deal less than it would cost to maintain him in a home for incurables.

The Parliamentary Committee of 1919 instructed that this letter be recorded in its minutes. Accordingly your Committee presumes that it is the basis for this provision in the legislation and that Attendance Allowance can properly be regarded as an additional payment to provide services in the pensioner's home in lieu of maintaining him in an institution.

HISTORY

Attendance Allowance for Blindness

The provision under which Attendance Allowance for blind pensioners can be continued when they are undergoing hospital treatment or are entitled to hospital allowances was enacted in 1936.²⁸ The annotation to the Act provided no explanation or reason for this provision. However, these reasons were brought out in the memorandum from Dr. H.J. Richardson of the Medical Advisory Branch of the Commission, addressed to the Commission under date of October 15, 1964, excerpts of which are quoted hereunder: ²⁹

1936

1964

- (i) The talking book machine and radio - The man who cannot read can listen only to conversation and a ward radio which may have objectionable programmes. Volunteer readers are available only for a very short period of any week. Reading braille is slow, exhausting, and often impossible. A pensioner for blindness is supplied with a talking book machine at D.V.A. expense, under an official agreement with the C.N.I.B. The machine which can be operated by the blind plays disc or tape-recorded material obtained on loan from the C.N.I.B. Library. The man not pensioned for blindness has no such right. A machine may be loaned or given him as an act of charity, which the independent man resents and sometimes refuses. Blind Attendance Allowance would permit purchase of a machine and help maintain morale. The same would apply to a radio with earphone, F.M. or otherwise, which would greatly augment the listening hours and choice of programmes.
- (ii) Minor comforts such as tobacco, candy, special foods, clothing, etc., help preserve morale. Occasional gifts from Legion or Red Cross are a poor substitute for independence.
- (iii) Treatment regulations made no provision for the expenses of persons wishing to visit the blind man in hospital. Blind Attendance Allowance facilitates regular visits by those who are unable to come at their own expense.
- (iv) The conduct of business transactions, whether involving legal services or not, is a problem to those who cannot read correspondence or documents. The hospital Welfare Officer helps out, but if special service is required it should be possible for the blind pensioner to pay for it.

HISTORY

- (v) When voluntary services are performed by fellow patients or staff, beyond the call of duty, the pensioner remains a debtor if he cannot express his appreciation with small gifts from time to time.
- (vi) A man on Treatment Strength who has a reasonable expectation of returning to his home presents his family with the problem of finding suitable accommodation. His blindness, often with other factors, makes at the least a severe strain on his memory re the location of hazards and conveniences, and makes him temporarily or permanently more dependent than before. The family cannot make rational plans for housing without an estimate of income, and the income from Blind Attendance Allowance cannot be known until the Commission has made an award. It is evident that in some circumstances the amount awarded for Blind Attendance Allowance will make a great difference in the family's ability to obtain accommodation commensurate with a blind man's special needs and problems.

The amounts provided in the Pension Act for Attendance Allowance have been increased by Parliament from time to time. Within the provisions of the Act, the Pension Commission has made a number of important changes throughout the years in regard to the maximum amount for blindness. These are detailed below:

<u>Date</u>	<u>Maximum Allowance under the Act</u> ³⁰	<u>Maximum Allowance Permitted for loss of sight of both eyes</u> ³¹
Sept. 2, 1919	\$ 450	\$ 200.
July 20, 1920	750.	350.
Oct. 1, 1947	1400.	960.
July 1, 1957	1800.	1200.
March 10, 1960	1800.	1440 *
Sept. 1, 1964	3000.	2750.

* This placed the allowance for the blind at more than 2/3rds of the total Attendance Allowance for the first time.

HISTORYAttendance Allowance for Paraplegia

The Canadian Paraplegic Association made representations, on March 5th, 1947, to H.A.L. Conn, Acting Chairman of the Pension Commission, requesting the continuation of Attendance Allowance for paraplegics who undergo periods of hospitalization.

1947

Mr. Conn advised the Minister of Veterans Affairs in a letter of the same date, as follows: ³²

I suggested that this problem might be met by an amendment to the treatment regulations, whereby some additional allowance might be made to this class while undergoing short periods of treatment in a departmental hospital, and referred them to Dr. Warner to discuss that aspect of the situation. I feel that it is highly inadvisable, if not impossible, to amend the Pension Act by Order-in-Council when Parliament is in Session. It is also undesirable to throw the Pension Act open for amendment so soon after the recent Parliamentary Committee on Veterans Affairs. The suggestion which I have made, if practicable, would obviate the necessity of such action being taken.

On March 21st, 1947, Dr. W.P. Warner, Director-General of Treatment Services, made a submission to the Deputy Minister in which he stated, as follows: ³³

Representations have been made by the Paraplegic Association through its President, Mr. John Counsell, and by the staffs of the paraplegic special treatment centres to the effect that satisfactory rehabilitation and progress of paraplegic patients is being adversely affected by the fact that the Helplessness Allowance * authorized by the Canadian Pension Commission is stopped during periods of hospitalization.

Practically all paraplegics at fairly frequent intervals have to be returned to hospital for investigation and treatment. These periods in hospital run from a few days up to 3 to 4 weeks. These patients generally have limited incomes and have made arrangements for attendance and incurred other financial obligations which must be carried out during the periods of hospitalization.

* Helplessness Allowance now known as Attendance Allowance.

HISTORY

The matter has been fully discussed with the Chairman of the Canadian Pension Commission who has recommended to the Minister that it is not expedient to amend the Pension Act at the present time.

The Minister has approved the principle of making a special treatment allowance equivalent to the Helplessness Allowance which is discontinued. It is, therefore, recommended that treatment regulations according to P.C. 4465, as amended, be further amended to authorize the payment of a special treatment allowance equivalent to the Helplessness Allowance for each specific case during any period of hospitalization up to a maximum of two months.

Under date of 11th April, 1947 Order-in-Council P.C. 1362 was approved, authorizing insertion of the following clause in Treatment Regulations. 34

A former member of the forces or other person who is in receipt of an additional pension under subsection (1) or (2) of Section 26 of the Pension Act because of paraplegia may on admission to hospital be awarded in addition to the allowances, if any, authorized under the provisions of this Order in Council, for a period not exceeding two months, an Allowance not exceeding such addition to pension.

COMMITTEE RECOMMENDATIONS

(80) That the Pension Commission prepare a special list of "necessities" in regard to the qualifications for Attendance Allowance for blinded persons, for inclusion in the Table of Disabilities; and that emphasis be given to the special problems of the blind in respect to:

Proposed
Revision in
"necessities"
For the blind

1. Constant companionship
2. Recreational activities
3. Transportation
4. Communication by the written word and by the spoken word bearing in mind that facial expressions and hand signals are meaningless, to this group.

(81) That the totally blind whose helplessness is the result of a pensioned condition be placed in the CONSTANT category in the Table of Disabilities which, at current rates, is \$3000. per annum.

Blind to be
Rated at
CONSTANT

(82) That the Act be amended to provide that Attendance Allowance be paid to pensioners only if their need of attendance is conditional, wholly or in part, upon a pensionable disability.

Need to be
Conditional
Upon
Pensionable
Disability

(83) That revision be made in the special categories for Attendance Allowance for amputees under the Table of Disabilities as follows:

Revisions in
Special
Categories

COMMITTEE RECOMMENDATIONS

<u>Disability</u>	<u>Present Rate</u>	<u>Amount now paid</u>	<u>Rate recommended</u>	<u>Amount recommended under existing rates</u>
Loss both arms above elbow	2/3rd CONSTANT	\$2,000.	11/12th CONSTANT	\$2,750.
Loss one arm above elbow; one below	2/3rd CONSTANT	\$2,000.	5/6th CONSTANT	\$2,500.
Loss one arm above wrist and one leg above knee	3/5th CONSTANT	\$1,800.	2/3rd CONSTANT	\$2,000..
Loss one leg above knee and one below	1/2 CONSTANT	\$1,500.	11/20th CONSTANT	\$1,650.

(84) That, for the purpose of Attendance Allowance, the Syme's Amputation be considered the same as a below the knee amputation.

Syme's
Amputation
Same as
Below knee

(85) That Section 33(3) of the Act be amended to provide continuation of Attendance Allowance while in hospital under treatment or care from the Department of Veterans Affairs for all pensioners in receipt of Attendance Allowance in the CONSTANT classification (i.e., maximum allowance \$3000. per annum at current rates)

Attendance
Allowance
To Continue For
Constant Class
In Hospital

(86) That the Act be amended to provide that Attendance Allowance in payment for all classifications below the maximum classification of CONSTANT be continued for a period of two months when the pensioner is in hospital under treatment or care from the Department of Veterans Affairs.

Attendance
Allowance
To Continue For
Two Months For
Classes Below
CONSTANT When
In Hospital

COMMITTEE RECOMMENDATIONS

- (87) That the Act be amended to state unequivocally that Attendance Allowance be not considered as part of pension paid in compensation for loss of earnings, or for other compensable handicaps circumscribed in Chapter 14 hereof dealing with Multiple Disabilities, and that such be paid for the specific purpose of indemnifying the pensioner for additional costs for attendance and other special requirements of his disabled condition.

Attendance
Allowance
Not Part
Of Pension

COMMENTAttendance Allowance for the Blind

Your Committee considers that the "necessities" set out in the Table of Disabilities to describe the qualifications for Attendance Allowance are satisfactory in regard to those disabilities which involve impairment of mobility. These encompass the acts of dressing, feeding oneself, attending to the wants of nature, taking exercise and protecting oneself from danger, as they apply to persons who have suffered severe loss of physical capacity. Your Committee suggests, however, that these necessities do not take into account the special problems of the blind. For this reason your Committee proposes that a special list of necessities be devised by the Pension Commission to comprise areas which are peculiar to those who have lost their sight. These should include:

Companionship: This area is of prime importance to a blind person as he cannot read or watch television, and he is completely dependent upon someone else in a way which is difficult for sighted persons to understand.

Recreation: The needs of a blind person in this area are completely dependent upon the provision of special equipment and, very often, require the services of a personal attendant.

Transportation: Most blind persons are completely immobile without the services of a personal attendant. Moreover, this person must have experience at directing the blind and the task cannot be normally left to those whose services could be engaged on a day-to-day basis.

Communication: The blinded person requires special attendance in the matter of communication, as he cannot read the written word except in Braille, the learning of which can be most difficult for some. The blind have numerous other disadvantages in the field of communication and often require the assistance of another person for instructions, correspondence, etc.

COMMENT

The Table of Disabilities provides two separate groupings - one for those whose need for attendance results from a pensioned condition, and one for those whose need results from a disability other than the one for which pension is paid under the Act.

Your Committee considers that some re-alignment of Attendance Allowance for the blind is necessary and suggests that, on the basis of the special list of needs, those blinded by a pensioned disability could be accorded the maximum Attendance Allowance permitted under the Act.

At the same time your Committee questions whether it is justifiable to continue to pay Attendance Allowance for blindness, where it is a non-pensioned condition. Attendance Allowance now in payment for those whose blindness is non-pensioned should not be reduced or cancelled. Your Committee does suggest however that, in future, Attendance Allowance for non-pensioned conditions of blindness should be paid as a matter of right, only if the requirement is conditional upon the pensioned condition as explained hereunder.

Attendance Allowance Only if Need is Conditional Upon Pensionable Disability

The Act states that Attendance Allowance may be paid where a pensioner is totally disabled and helpless, whether he is entitled to a pension of 100% or lower. This has been interpreted by the Pension Commission to mean that the maximum Attendance Allowance of \$3000. may be granted to a person even when the pensionable disability has been assessed at less than 5%. An example quoted in the brief from the Multiple Disabilities Group (and verified by your Committee), is as follows:³⁵

COMMENT

A five percent pension was awarded in respect of a gunshot wound in the right ankle. Subsequently the veteran became 100% disabled from a non-pensionable hemiplegia and received the maximum Attendance Allowance.

This policy was outlined by the Pension Commission in Routine Instruction No. 107 dated October 16th, 1946, an excerpt of which reads as follows: ³⁶

Under the British Ministry scheme Helplessness Allowance may only be paid for the pensionable disability, whereas under the Canadian scheme, Helplessness Allowance can be issued although the condition causing the helplessness is not related to the pensionable disability or attributable to service.

Your Committee does not criticize the interpretation of the Pension Commission which has permitted payment of Attendance Allowance in the cases in cases of this nature. It is suggested, however, that the Pension Act now be clarified to provide payment for Attendance Allowance where the need thereof is not the result of a pensioned condition, only if this need is conditional upon a pensioned condition. In order that the recommendation may be fully understood, the following hypothetical examples are cited:

- (1) A pensioner is in receipt of 10% pension for gunshot wound to his right hand. He later undergoes amputation of both legs due to disease for which there is no pension entitlement. The need for Attendance Allowance arises out of the amputation of his legs and this need is not conditional upon the disability which arose from gunshot wound. Hence, there is no justification for payment of Attendance Allowance.
- (2) A pensioner is in receipt of 80% pension for amputation of a leg due to gunshot wound. In the post-discharge period he suffers a cerebral vascular accident leaving him paralyzed on his right side, with the result that he requires Attendance Allowance. The need for this Allowance is derived directly from his vascular disease which is non-pensionable but is conditional upon the limitation involved in the loss of his leg. Therefore, Attendance Allowance would be justified.

COMMENT

Your Committee does not suggest that awards of Attendance Allowance already in payment under the existing procedure of the Pension Commission be changed. At the same time, it seems inescapable that the intent of the original legislation was to permit the payment of Attendance Allowance only where there was a need for attendance arising out of a pensioned condition, but where that condition did not necessarily result in an assessment at that time of 100%. In all likelihood, the intent was to cover those assessments which were close to but not quite at the top of the bracket.

When Attendance Allowance was first introduced in the Act the pensioner who had several disabilities, the combined total of which exceeded 100%, could not reach the maximum assessment of 100%, as the Commission policy was to deduct the highest pension rating from 100%, and to base subsequent ratings on the remaining portion.

An explanation of the policy in this regard was given in the Report of the Royal Commission on Pensions, 1922-24, as follows: ³⁷

Another reason advanced for revision of the Disability Table is that frequently, under the present practice, only 80% or 90% is awarded for more than one amputation (referred to as multiple disabilities) where the total of such disabilities, estimated separately is over 100%. The method by which a rating of less than 100% for these cases is arrived at may be theoretically correct, but has given rise to considerable complaint. Take the case of the man with two legs off, one at the knee and the other below the knee. The former entitles him to 60% pension, the latter, 40%, a total of 100%. The Disability Table provides for "Loss of two extremities, up to 100%" but this maximum is seldom allowed. The pensioner is told: amputation of one leg at the knee entitles you to 60% therefore, you are now only 40% fit. Amputation below the knee entitles you to 40% but as you are already only 40% we will allow 40% of the remaining 40% which is 16% and 16% added to 60% is 76% - say 80%.

COMMENT

This policy was revised by the Commission in an Amendment in the Table of Disabilities on October 20th, 1945, and provides: ³⁸

Where more than one pensionable disability exists, the combined assessment will be based on the combined disablement as a whole, but in no case will assessment exceed 100%.

When the separate pensionable disabilities are the result of wound, injury or disease and confined to, either the extremities, the eyes, the ears, or vital organs, and the disabilities have entirely independant functional effects, extreme care will be exercised in assessing each disability separately, and the composite assessment will be the arithmetical sum total.

There is no evidence to indicate that Attendance Allowance was to be paid for helplessness which was not the result of a pensioned condition. However, in the absence of specific direction in the legislation, the Pension Commission is not to be criticized in the view of your Committee, for extending this Allowance to persons in receipt of only a very small pension, and where the need for the Allowance was in no way connected with a pensioned condition.

However, your Committee cannot see the logic of the continuation of the existing interpretation. It is realized that the acceptance of its recommendation in this regard would result in less favourable coverage under the Pension Act for those in receipt of small pensions, where a condition of helplessness cannot be considered as conditional upon the pensioned condition. Notwithstanding, there seems no justification for the use of the Pension Act to provide financial assistance to such persons, bearing in mind that Attendance Allowance is presumably intended as a means of supplementary financial aid for those suffering from severe forms of disability which are related to service.

COMMENT

Those in receipt of small pensions who subsequently become helpless by reason of a non-pensioned condition can presumably be assisted through the means of other legislation. Also, there is a possibility of assistance for them by means of the compassionate pension provision under Section 25 of the Pension Act.

Your Committee, in its comments herein on the matter of Attendance Allowance, points out that age in itself cannot be a determining factor in qualifying for an award for Attendance Allowance. It is suggested however, that where the requirement for an attendance allowance is conditional upon a pensionable disability, the Pension Commission should take into account mental or physical impairment as one of the factors contributing to the need for attendance.

Special Categories of Amputee

Your Committee considers that some re-alignment is necessary in the provision of Attendance Allowance for special categories of amputees as set out on Page 22 of the Table of Disabilities of the Pension Commission.

It is suggested that Attendance Allowance for an amputation of both arms above the elbow should be placed in the ALMOST CONSTANT category which, under current rates, would provide an allowance of \$2,750.

Provision should be made for intermediate groups of amputee for which no special category has been made in the Table of Disabilities. These are:

Loss of one arm above the elbow and one below the elbow.

Loss of one arm above the wrist and one leg above knee.

Loss of one leg above the knee and one below knee.

This would provide a more equitable basis for payment of this allowance, commensurate with the physical loss.

COMMENTAttendance Allowance - Syme's Amputation

Your Committee notes that, under date of December 22, 1964, the assessment for a Syme's amputation was increased from 40% to 50%.³⁹ This places the assessment for a Syme's amputation at the same level as that for a loss of a regular below-knee amputation. Your Committee considers that the Pension Commission, having established this level of 50% as the assessment for a Syme's amputation, should now rate the Syme's amputation, exactly the same as the below-knee amputation for the purposes of Attendance Allowance.

A study of the "necessities" for qualification for Attendance Allowance in the Table of Disabilities would seem to indicate that a pensioner suffering from a double Syme's amputation would be no less handicapped in respect of the need for attendance than a person suffering from the loss of both lower limbs below the knee.

Continuation of Attendance Allowance while in Hospital

Your Committee notes that, under Section 36(3) of the Act, Attendance Allowance is continued while in hospital for the pensioner who is blind. Under Section 40 of the Treatment Regulations of the Department of Veterans Affairs, a similar provision is extended to paraplegics, but this provision is limited to a maximum period to two months. When this provision was made for paraplegics in 1947, Mr. H.A.L. Conn, Acting Chairman of the Pension Commission, suggested to the Minister that it was "inadvisable" to attempt to amend the Pension Act in order to make such provision for paraplegics, due to the fact Parliament was in session; and that it was "undesirable" to throw the Pension Act open for amendment so soon after the recent Parliamentary Committee on Veterans Affairs.

COMMENT

Your Committee, in reviewing the history surrounding the inception of this special provision, came to the conclusion that the use of the Department of Veterans Affairs Treatment Regulations was in the form of a temporary compromise. It is the view of your Committee that this should now be superseded by an amendment of the Act.

Your Committee is of the further view that the Act should be amended to extend to all pensioners in receipt of maximum Attendance Allowance, the same provisions as those which now obtain for blind pensioners under Section 30(3), i.e., continuation of the allowance during the full duration of Departmental medical treatment.

Your Committee considers that provision should be made for continuation of Attendance Allowance for those in the lower classifications, for a period of two months. The argument, submitted by various veterans organizations, concerning the necessity for a pensioner to continue payments to those who provide attendance for him, even though the pensioner may be in hospital, appears valid.

It does not seem practicable that a high disability pensioner, who engages a housekeeper or other attendant, should be expected to dispense with these services while he is in hospital. This would leave him with a difficult problem of attempting to engage a new attendant upon his discharge, and it is only reasonable that the Attendance Allowance should continue in payment while he is in hospital. This Allowance should be continued indefinitely for the CONSTANT classification, and for a period of at least two months for the lower classifications, to make it possible for him to continue to pay the attendant in the expectation that he will require these services when he is released.

COMMENT

It has been amply demonstrated, in representation and evidence, that Attendance Allowance is required, not solely for the engagement of a personal attendant but generally to meet the added costs of severe disability. These costs can include special types of housing and transportation, the expense of which carries on if the patient is in hospital. Hence there are sound reasons to support the proposals made herein, both from the need of a pensioner to continue to pay for attendance, or to meet other additional costs of his disability.

Attendance Allowance to be Paid for the Purpose of Meeting Additional Costs of Disability

Your Committee considers that Attendance Allowance should not form part of the pension paid in compensation for a disability. It is suggested elsewhere in this report that pension up to 100% be based on the loss of earning power, and that where there are additional effects of the disability in a substantial extent such as anatomical loss, scarring and disfigurement, loss of enjoyment of life, pain and discomfort and an expected shortening of the life span, these should be compensable at rates in excess of 100%.

Your Committee notes some ambiguity in the past in regard to the purpose for Attendance Allowance. The early provisions of pension legislation made it clear that Attendance Allowance was primarily based on the need for services and attendance. In 1965 the Chairman of the Pension Commission stated before your Committee that the Government had introduced Attendance Allowance "believing that the heavily disabled veteran is entitled to something more than the basic rate of compensation". *

* See Chapter 14 on Multiple Disabilities.

COMMENT

This view, in your Committee's opinion, is sustainable only if the "something more" means "something in addition to" pension. The letter of Mr. Scammell, recorded in the Minutes of the Parliamentary Committee referred to on page 654 hereof, makes it clear that Attendance Allowance was something in addition to pension and was intended, in large measure, to enable the Government to discharge its responsibility for caring for the veteran by subsidizing him in his own home.

Your Committee is impressed with the view that Attendance Allowance is what might be termed "encumbered income" for the pensioner. It does not represent a financial gain to the recipient. It is not related to the extent of pension for disability, but is based on what is considered as necessary funds to provide the services and attendance required by the pensioner. It is possible for a 5% pensioner to receive the same Attendance Allowance as a quadruple amputee. It may be noted, also, that under the War Veterans Allowance Act, while disability pension is considered income for the purpose of qualifying for allowance under the Act, Attendance Allowance is not.⁴⁰

The view taken by your Committee that Attendance Allowance is not pension, seems not only to be sound, but to be in line with the background and early practices of the Commission and its predecessor, the Board of Pension Commissioners.

ATTENDANCE ALLOWANCEREFERENCES

1. Canadian Pension Commission, Table of Disabilities, Page 21.
2. Ibid, Page 22.
3. Ibid, Page 22a.
4. Department of Veterans Affairs, Treatment Regulation, Section 40.
5. Minutes, General Meeting, Canadian Pension Commission, June 26, 1951.
6. Proceeding of Committee Sessions, Volume I, Page A-11.
7. Ibid, Volume I, Page A-11.
8. Ibid, Volume I, Page A-12.
9. Ibid, Volume I, Page A-12.
10. Ibid, Volume I, Page B-34.
11. Ibid, Volume I, Page C-9.
12. Ibid, Volume I, Page F-64.
13. Ibid, Volume I, Page F-65.
14. Ibid, Volume II, Page K-40.
15. Ibid, Volume II, Pages K-43 to K-46.
16. Ibid, Volume II, Page K-47.
17. Ibid, Volume II, Page K-54.
18. Ibid, Volume II, Page K-53.
19. Ibid, Volume II, Page K-55.
20. Ibid, Volume II, Page K-52.
21. Schedule, Pension Regulations, issued August 4th, 1914.
22. Pension Regulations for those serving in the Naval Forces of Canada and the Canadian Expeditionary Force, as approved by Order-in-Council PC 1334, June 3rd, 1916 as amended October 11th, 1916 and October 22nd, 1917.
23. S.C. 1919, C.43 assented to July 7th, 1919.
24. Pension Act with Annotations, July 1st, 1919.
25. Order of Reference, Parliamentary Session, March 3rd, 1919.
26. Proceeding, Special Committee on Pensions and Pensions Regulations Appendix 3, Page 256.
27. Ibid, Page 257.
28. S.C. 1936, C.44 assented to June 23rd, 1936.
29. Canadian Pension Commission subject file on Attendance Allowance.
30. See Pension Acts as of dates shown.
31. Canadian Pension Commission subject file on Attendance Allowance.
32. Ibid,
33. Department of Veterans Affairs subject file 3-1-71.
34. Department of Veterans Affairs Treatment Regulations, 1947, Section 40.
35. Proceedings of Committee Sessions, Volume VI, Page FF-18.
36. Canadian Pension Commission subject file on Attendance Allowance.
37. Report, Royal Commission on Pensions and Re-establishment 1922-24, Sessional Paper 203, Page 47.
38. Canadian Pension Commission, Table of Disabilities, Page 5.
39. Ibid, Page 10.
40. War Veterans Allowance Act, Section 6(1)(a).

AUTOMATIC AGE INCREASEGENERAL

The Table of Disabilities of the Pension Commission provides for an increase in pension in respect of amputation when a pensioner reaches the age of 55 years, as follows: ¹

When a pensioner who is in receipt of a pension at the rates of 50%, 60% or 70% in respect of an amputation reaches the age of 55 years an additional 10% shall be added to his assessment; at 57 years a further 10%, and at 59 years a further 10% until the assessment in respect of amputation in each case becomes 80%. Similar action will be taken in the cases of pensioners in receipt of pension for gunshot wounds.

The application of this provision was clarified at a general meeting of the Pension Commission on April 14th, 1954, as follows: ²

It is resolved that cases of amputation or disability, due to or arising out of wounds or injuries, the result of direct action with the enemy and when the degree of disablement is 50% or more, are eligible for age increases.

The effect of these rulings of the Commission is that persons in receipt of pension for amputation or gunshot wounds, which are the result of direct action with the enemy, are granted increases as follows:

- (1) A 50% pensioner to 60% at age 55, to 70% at age 57 and to 80% at age 59.
- (2) A 60% pensioner to 70% at age 55, and to 80% at age 57.
- (3) A 70% pensioner to 80% at age 55.

REPRESENTATIONS AND EVIDENCE

The War Amputations of Canada: This Association submitted two recommendations to your Committee concerning the automatic age increase provisions of the Table of Disabilities. The first of these dealt

REPRESENTATIONS AND EVIDENCE

with the stipulation that increases under this provision can be approved only where the wound or injuries are the result of direct action with the enemy. The brief of the Association stated, in regard to this point:²

This limitation means, in effect, that war amputees who suffered disability in training accidents, or through some other cause directly attributable to military service, but not as the result of action with the enemy, are denied the benefits of this provision.

It is the contention of this Association that, due to the many hazardous forms of war service, this limitation represents a severe form of discrimination against amputees who have lost a limb or limbs through causes other than the result of direct action with the enemy. A classic example would be a flying accident in England.

It is considered, therefore, that the only equitable means of applying this benefit, without discrimination, is to amend the Table of Disabilities to include automatic increase with age in all cases regardless of the cause of amputation.

It is understood that the decision to grant automatic age increases to certain disability pensioners arose out of a desire on the part of the Government and the Pension Commission to do two things:

- (a) To compensate a man with a fixed disability as he grew older, so as to make provision for the increased disability which necessarily arises from the degeneration of movement associated with old age.
- (b) To provide additional assistance to the man who suffered a disability in actual contact with the enemy.

It is understood also that, in part, the automatic increase with age provision was a means of permitting an increase of 50% assessment to reach 80% at a time when pension was paid to a pensioner's widow only if he were in receipt of pension of 80% or more.

REPRESENTATIONS AND EVIDENCE

The Pension Act now provides that widow's pension is paid to a widow if her husband's pension was 48% or greater. Accordingly, it is no longer necessary to provide for automatic increase for the pensioners in receipt of 50%, 60% and 70% pension in order to bring the pension to 80% to protect a widow.

Notwithstanding, the main reason for the institution of this provision in the Pension Act was obviously to compensate for a fixed disability as the pensioner's age increased. Accordingly, this Association considers that the automatic increase with age provision should be made available to all amputees, regardless of the cause of the amputation. It is neither feasible nor justifiable to discriminate between a man who suffered the loss of a leg in a training accident and one whose amputation resulted from direct action with the enemy.

The second recommendation concerned the limitation that this automatic age increase did not apply to pensioners in receipt of pension of 80% or more. The brief stated:⁴

It is the contention of this Association that this provision in the Table of Disabilities is discriminatory against pensioners in receipt of pension of 80% or more, in that it makes no provision for such pensioners to reach 100% through automatic increase with age.

Presumably the automatic increase with age provision was adopted on the assumption that the Government did recognize that disability through amputation increases in severity with aging.

The experience of members of this Association would indicate, beyond doubt, that this assumption is correct for pensioners in receipt of pension between 50% and 70%. Our Association suggests that the assumption applies equally to those in receipt of pension of 80% or more.

It is therefore proposed that the Table of Disabilities be revised to provide automatic increase with age provision for those in receipt of pension of 80% or more.

The automatic increase, as proposed herein, would provide as follows:

REPRESENTATIONS AND EVIDENCE

Normal assessment of 50% - three increases of 10% at ages 55, 57 and 59 to a maximum of 80%.

Normal assessment of 60% - three increases of 10% at ages 55, 57 and 59 to a maximum of 90%.

Normal assessment of 70% - three increases of 10% at ages 55, 57 and 59 to a maximum of 100%.

Normal assessment of 80% - three increases of 10% at ages 55, 57 and 59 to a maximum of 100%.
(plus 10% additional pension).

Normal assessment of 90% - three increases of 10% at ages 55, 57 and 59 to a maximum of 100%.
(plus 20% additional pension).

Note: If the 100% ceiling is eliminated, it would seem appropriate that the automatic increase with age be extended so that amputations assessed at 80% or more would receive three automatic increases of 10% each commencing at age 55.

This recommendation, although of tremendous value to amputees, would result in only a limited cost to the Government in view of the age group of the pensioner involved. It is also emphasized that it is the pensioner in receipt of 80% or more who has the greatest requirement for automatic increase in pension in later years.

Such higher disability pensioners are excluded from the automatic increase benefit, as the regulations exist. There seems no reasonable basis for the contention that an amputation disability rated at 80% on initial assessment does not grow worse with the years, in the same manner as a disability initially rated at 50%. In both instances the amputee faces many increased hazards as he grows older.

The War Amputations of Canada made further representation concerning Pension Commission policy in regard to the limiting of Automatic Age Increases to that portion of a disability which arose from amputation or gunshot wounds, thus disallowing an increase if there was a possibility that the condition would worsen. The brief outlined this matter, as follows: 5

REPRESENTATIONS AND EVIDENCE

Permanent Assessment - Automatic Age Increase

The Table of Disabilities provides automatic age increases when a pensioner in receipt of pension at the rates of 50%, 60% or 70% in respect of an amputation reaches the age of 55. These increases are in the amount of 10% every two years until the pensioner reaches the age of 59, or until a maximum assessment of 80% is reached.

Where a pensioner has an assessment of 50% for amputation or gunshot wound, plus a further assessment for a related disability, some confusion exists due to the following policies:

1. Where the pensioner is in receipt of 50% assessment for amputation and has a further related assessment of, say 5%, the Commission may grant automatic age increase of 10% at age 55, further 10% at age 57 but only 5% at age 59 to bring the pensioner to the maximum of 80%.
2. If it is considered that the related disability could worsen the Commission may not grant the automatic age increase at all, presumably on the understanding that the related condition can be revised upwards in the course of time to bring the pensioner to 80%.

With regard to (1) above, it is suggested that the pensioner is entitled to the full benefit of the automatic age increase on the basis of his amputation alone. That is to say, the Commission should grant him full benefits of the increase of that part of his assessment which is given for amputation, hence bringing him from 50% to 80% between the ages of 55 and 59 and adding to the 80% assessment, the percentage of assessment given for the related disability.

With regard to (2), it would seem that the pensioner is entitled to the full benefit of the automatic age increase on the basis of his amputation alone, without having to rely on the possible worsening of the related condition. Hence, the 50% assessment should increase to 80% at age 59, and, as suggested in the paragraph immediately above, the man should have the benefit of any additional assessment over and above the 80%.

HISTORY

Provision for automatic age increase was approved by the Pension Commission and promulgated by Routine Instruction No. 66 dated January 25th, 1938.⁶ This Instruction explained the amendment to the Table of Disabilities concerning Automatic Increase with Age * and stated:

The object of this change is to endeavour to recognize more adequately the handicapped due to injuries which are the result of direct enemy action as compared with those resulting from diseases ruled attributable to service.

The Commission policy respecting automatic age increase was reviewed at a General Meeting of the Commission on February 5th, 1948, and the following resolution was approved:⁷

Amputations or disabilities due to wounds, arising out of wounds, or injuries the result of direct enemy action, and when the degree of disability is 50% or more are eligible for age increases.

The result of this resolution was to clarify the policy that automatic age increase be restricted to amputation or gunshot wounds or injuries resulting from direct enemy action.

This matter was reviewed again at a meeting of the Commission on June 29th, 1950, at which time representations from veterans organizations concerning the possibility of extending automatic age increases to those who suffered amputation or gunshot wounds as a result of accident was considered. The memorandum placed before the Commission by the Chief Medical Adviser of the Pension Commission, dated June 12th, 1950, contained the following:⁸

We should know whether those with service in the Active Force are going to be adjusted on the same basis as those who served in the C.E.F.* * So far as I know, there has yet been no instruction covering Active Force service.

* See page 675 hereof.

** Canadian Expeditionary Force, which served overseas in World War I.

HISTORY

Those who served in the C.E.F. had to be in receipt of pension at 50% rate or over in respect of amputation or gunshot wounds, the direct result of enemy action. In compiling the Active Force cases, a record has been kept of those in receipt of pension at 50% or over the result of accident or injury as well, in anticipation of a possible change in policy. Whether or not any change is to be made is something on which we should be advised. We do know that during World War II many were seriously injured in motor cycle accidents, land-mine explosions, and aircraft crashes, and anticipate a great deal of trouble in establishing whether or not, such injury might be attributable to direct enemy action, unless a clear-cut policy is laid down by the Commission.

The Commission confirmed the policy that automatic age increase would be restricted to those whose disability was the result of direct enemy action.

At a general meeting of the Commission on April 12, 1954, con- 1954
sideration was given to a more generous application of the provision for automatic age increase, with particular reference to accidents in training and in various theatres and an amendment was approved to broaden the scope of the Commission in applying this benefit to govern not only wounds and injuries incurred as a result of enemy ammunition but also wounds and injuries resulting from the ammunition of Allied Forces, when in contact with the enemy. The resolution approved at that meeting was as follows: 9

It is resolved that cases of amputation or disabilities, due to or arising out of wounds or injuries, the result of direct action with the enemy and when the degree of disablement is 50% or more, are eligible for age increases.

The Department of Veterans Affairs advised the Royal Canadian Legion, in regard to the reasons for automatic age increase, as follows: 10

HISTORY

The reason for the automatic increase for amputation and gunshot wounds case was because they had a fixed assessment and the degree of disability imposed a greater handicap with advancing years and in the case of other pensioners, particularly those pensioned for disease, the assessment is not fixed and increases with, and is raised in accordance with, any increase in pensionable disability.

Under date of April 3rd, 1958, the Pension Commission, at its general meeting, considered a representation from the War Amputations of Canada as follows: ¹¹

Therefore be it resolved that the War Amputations of Canada, in convention assembled at Victoria, B.C., request the Government to amend the Pension Act and Regulations so that all amputees with a fixed assessment of 50% or greater be granted the automatic increase because of age, regardless of whether the amputation is the result of gunshot wound or accident, providing such injury was incurred while on Active Service anywhere in the world.

This proposal was rejected at a general meeting of the Commission on April 1st, 1958. No grounds for the rejection were reported in the minutes of the meeting.

At its meeting of September 9, 1965, the Commission considered a recommendation from the War Amputations of Canada that increase with age be made available to pensioners in receipt of pension of 80% or more. This recommendation was similar to that made to your Committee. * The comments of the Minister of Veterans Affairs on this recommendation were reported at the meeting as follows: ¹²

As pointed out above, the automatic age increases were originally cut off at 80% because it was at that level that the widows and children were guaranteed pension in the event of the pensioner's death from other than his pensionable disability. The limitation is no longer valid on this basis alone, because the dependants of the 50% pensioner now enjoy this protection.

* See page 677 hereof.

HISTORY

I am inclined to agree that there is little, if any justification for stopping these increases at 80% at this time, and I will ask the Commission to consider this question.

The Commission might consider extending the automatic age increase to a maximum of 100%. Any additional payments beyond the maximum for 100% would, of course, require an amendment to Schedule A of the Pension Act.

The Commission, at this meeting, decided to appoint a Committee to study the recommendation. However, the Commission Chairman advised, in a letter of December 8th, 1966, that the committee had not commenced its work as it was decided to await the results of the survey being reported on herein.

The application of the automatic age increase policy of the Commission in regard to pensioned conditions which were progressive was clarified in a directive issued by the Commission Chairman under date of March 22nd, 1966. This directive stated, in part: ¹³

1966

There seems to be an erroneous impression that any disability or group of disabilities with a combined level of 50% assessment are eligible for the Automatic Age Increases at age 55, 57, 59, and this is not in accordance with the original requirements. Put in its simplest form, cases may be eligible for Automatic Age Increases when:

1. The wound or injury is the result of direct action with the enemy;
2. The assessment for a single or for multiple disabilities exceeds 47% and less than 80%; and
3. The disability or disabilities are fixed by the Table or are of such a nature that there is little likelihood the veteran would receive an increase in his assessment with advancing years.

The above makes it abundantly clear that a number of disabilities which are subject to progression would not qualify under the third requirement and such disabilities would include a chest condition the result of gunshot wounds or injuries, deafness due to acoustic trauma, traumatic arthritis associated with a service injury, etc.

HISTORY

Your Committee notes three different reasons given by officials of the Pension Commission for the institution of the automatic age increase. These are:

1. The object of this change is to endeavour to recognize more adequately the handicapped due to injuries which are the result of direct enemy action as compared with those resulting from diseases ruled attributable to service.¹⁴

2. I am pleased to be able to inform you that the Commission with the express concurrence of The Honourable the Minister of Pensions and National Health, has decided to make certain amendments in the Table of Disabilities with a view to providing more adequately for pensioners who have suffered severe wounds, particularly in respect of the increasing handicap which, it is felt, advancing years bring in such cases.¹⁵

3. The automatic age increases were introduced to ensure that veterans with gunshot wounds or amputation whose level of disability was fixed by the Table could be given the benefits of Classes 1 to 5 (80%) in the event of death. Although the original action was taken in 1937 and 1938, in the autumn of the latter year, the requirements under the now Section 36(3) were reduced to Classes 1 to 11 and the basic reason behind the purpose for the amendments was no longer valid. The practice has however, continued with some broadening of the requirements in that the disabilities are not now confined to amputations, or gunshot wounds, but include all traumatic wounds or injuries the result of direct action with the enemy.¹⁶

COMMITTEE RECOMMENDATIONS

(88) That automatic age increases be applied by the Commission in accordance with existing policy with the following revisions:

- (a) that such increases be awarded commencing at age 55 for pensioners hereinafter defined wherein pension assessment has been approved at rates of 48% or greater, to provide three 10% increases at two year intervals, except that automatic age increase shall not be used to provide an assessment in excess of 100%; Three 10% Increases to Commence at Age 55
- (b) that such increases apply to all fixed disabilities resulting from injury or wounding which have been assessed as "Apparently Permanent" by the Pension Commission; To apply to "Apparently Permanent" injury or wound
- (c) that, where a pensioner has been given a fixed assessment of one or more conditions arising from injury or wounding and a further assessment for a condition of a non-permanent character, the automatic age increase shall apply on that portion of the assessment which has been ruled by the Commission as "Apparently Permanent". Non-Permanent Assessment

(89) That where a pension is in payment for a pensioned condition and the pensioner has received one or more automatic increases, and he subsequently is granted additional entitlement for a condition ruled as consequential upon pensionable condition, an assessment be made for the consequential disability and any such assessment be added to the existing assessment, and be reflected in increased pension payment, regardless of whether part of that payment was approved as an automatic increase with age. Consequential Disabilities to be added

COMMENTGeneral

Your Committee noted that the Commission follows the general principle that medical and physical deterioration due to age, in itself, is not a disability for the purposes of assessment. This principle was outlined in a statement approved by the Board of Pension Commissioners and issued for the guidance of the Commission's medical staff, per Circular Letter No. 1936, dated October 11, 1923. This principle is quoted hereunder: ¹⁷

To arrive at an estimation of the amount of the abnormal pathological condition present at any time the man should be compared with a normal man of his age, and the abnormal amount dissassociated and considered a separate entity. In other words the extent of pathological condition over and above that found in an average normal man at a stated age should be considered as causing a disability.

Your Committee noted also that, in regard to Attendance Allowance provided under Section 30(1) of the Act, the Commission considers that age, in itself, cannot be viewed as a requirement for Attendance Allowance. The policy in this respect is explained in the chapter dealing with Attendance Allowance.*

It would seem that, in the awarding of pensions generally, a pensioner's age cannot be taken into account in determining the initial assessment for a disability. Your Committee agrees with the principle, as enunciated above, that a pensionable condition must be assessed on the basis of the disability as it would apply in a normal man of the age of the pensioner. It is noted, however, that if the pensioned condition worsens by reason of advancing age, the Commission can and does increase the assessment either through automatic age increases or through the practice of medical re-boards.

* See Chapter 17 hereof.

COMMENT

There is a fine line of distinction here and your Committee agrees that it should be maintained. That is to say, advanced age in itself is not a disability which can be recognized under the Pension Act, but where the effect of advancing age is to increase the severity of a disability related to the pensioner's ability to perform on the unskilled labour market, an increase in the assessment is warranted.

It can be reasoned that the Pension Commission's decision in 1938 to limit automatic age increases to those in receipt of pension of below 80% was in keeping with the desire to ensure that such pensioners reached the 80% level in order to provide a form of "life insurance" for their dependants should they die from a cause not attributable to service or while not on Departmental strength for treatment.

Your Committee considers that automatic age increases should be based on a more realistic premise, i.e., that of providing increases automatically with advancing age for pensions arising from injury or wound, where such have been assessed as being of permanent character. It follows that these increases should apply to pensioners of 80% or more. In fact, it appears evident that the higher the disability on the pension scale, the more justification there is for providing automatic increase with age, within the limitations of the Act. Accordingly, your Committee has recommended that automatic age increases as proposed herein should be awarded up to a maximum of three increases of 10% every two years. This would have the following results:

COMMENT

<u>Permanent Assessment</u>	<u>Pension at Age 55</u>	<u>Pension at Age 57</u>	<u>Pension at Age 59</u>
50%	60%	70%	80%
60%	70%	80%	90%
70%	80%	90%	100%
80%	90%	100%	
90%	100%		

It is not feasible that automatic age increases could be used to provide an assessment in excess of the rate of 100%, which is suggested by your Committee as the maximum compensation for loss of earnings. Any assessment in excess of 100% should be based on conditions arising from multiple disabilities. *

Automatic Age Increase to Apply to Assessments for Injury and Wounding

Your Committee has sought to clarify the premise on which automatic age increases are approved. It seems likely that this provision was placed in the Table of Disabilities in 1938 in order to provide some orderly method through which a pensioner in receipt of pension of 50% or more from amputation could reach a maximum of 80% by age 59 so that, in the event of his death, the widow could be assured of pension. At that time, pension was paid to a widow only if the death of the pensioner was attributable to the pensioned condition, or had occurred on Departmental strength, or was in payment at 80% or greater.

Although a reason for the inception of the provision may have been to provide a form of "life insurance" for certain classes of pensioner, it would appear that the provision had other justification. For example,

* See Chapter 14 on Multiple Disabilities.

COMMENT

the Commission's Routine Instruction No. 66 issued under date of January 25th, 1938, stated:

The object of this change is to endeavour to recognize more adequately the handicap due to injuries which are the result of direct enemy action as compared with those resulting from diseases ruled attributable to service. *

Your Committee considers now that the guiding principle should be the establishment of adequate provision for automatic increase with age for fixed disabilities which have been recognized by the Commission as "Apparently Permanent".

This will involve an alteration of the original principle by removal of the requirement that the disability be the result of direct action with the enemy. The original purpose of restricting this provision to injuries which resulted from enemy action is not at all clear in the records of the Commission. Your Committee observed, however, that in the explanation given in Routine Instruction No. 66, a comparison was drawn with injuries which resulted from diseases. Hence, it seems possible that the intent may have been, in part, to provide automatic increases for those whose disability was of a wound or injury type, and was permanent in character.

Your Committee considers it significant that there is an important group of pensioners somewhere between those whose injuries were the result of enemy action and those in the disease category. This group consists of pensioners who received serious injury (in receipt of pension of 50% or more) as the result of training or other accident not the result of direct action with the enemy but which, nonetheless,

* Effective April 14, 1954, this was changed to "direct action with the enemy" by Resolution of General Meeting of the Pension Commission.

COMMENT

may have been sustained under dangerous or otherwise deserving circumstances.

Although the exact purpose of drawing a distinction between certain types of injury at the time of the inception of this measure may not be too clear, in your Committee's view there is justification for placing automatic age increases on a sounder footing. Accordingly, the recommendation has been made that this measure should be extended to all wounds and injuries of a permanent character. The reasons are two-fold:

1. A disability of this nature must, of necessity, become a more severe handicap with advancing age. In illustration, an above-knee amputation at mid-thigh represents a 70% disability at age 40. This same disability would be much more of a burden when the pensioner reaches age 60.
2. The circumstances of military service during and subsequent to World War II were such that there should be no distinction drawn between an injury and wound suffered in direct action with the enemy, and one which was attributable to or incurred during service generally. These circumstances include aircraft crashes, accidents from the use of mechanical equipment and advanced training methods, often using live ammunition.

Your Committee considers that the only distinction which the Pension Commission should draw for the purposes of automatic age increase for disabilities arising from injury or wounding is between those which are permanent and those which are non-permanent. Where the Commission has ruled that the injury or wound has resulted in a permanent disability of 48% or greater it should be accepted by the Commission that the physical incapacity of the condition will progress with age. The Commission has already accepted this theory in regard to amputation and gunshot wounds arising from direct action with the enemy. It should now be extended to all injury or wounds, regardless of where or how they were incurred.

COMMENT

Your Committee is aware that this problem could be handled by means of the Commission arranging for medical re-board for this category on a regular basis, as the pensioner advances in years. It seems more efficient to do this on the basis of automatic age increase, thus saving time, inconvenience and administrative expense. The adoption of this measure would represent also a tangible form of assurance to the pensioner regarding the intention of the Government to grant him the fullest possible measure of compensation, having regard for the serious disability he carries as the result of his service to the country.

Non-permanent Assessments

Your Committee examined the memorandum issued by the Pension Commission Chairman, * with particular reference to the statement that disabilities which are subject to progression (i.e., diseases) would not qualify for automatic age increase. This is not in dispute. Where, however, a pensioner has been given a fixed assessment which would qualify him for automatic age increase, and in addition has an assessment for a disability which would not qualify for automatic age increase (as it is classified as non-permanent), the latter should not affect the former. In other words, the automatic age increase should still apply to that portion of the assessment which has been ruled as "Apparently Permanent". In the result, the assessment for the other disability would be added to the total assessment awarded by reason of the fixed disability plus automatic age increase.

In illustration, a pensioner is in receipt of a 50% pension for gunshot wound, plus 10% for deafness, providing a total assessment of 60%. At age 55 the pension for a gunshot wound would increase from 50%

* See page 683 hereof.

COMMENT

to 60% and with the 10% for deafness he would be placed at 70%. At age 57 he would receive a further 10% by way of automatic age increase, giving him 70% pension for his gunshot wound and 10% for deafness making a total assessment of 80%. At age 59 he should, under the terms of the automatic age increase provision, receive a further 10% for his gunshot wound. However, under existing policy the further 10% by way of automatic age increase would not be approved and he would be limited to a total pension assessment of 80%.

Your Committee considers that, at age 59, this pensioner should be entitled to the third automatic age increase, in that the increased disability as represented by his gunshot wound would bring the assessment for that disability from 50% to 80% over the four year span from age 55 to 59. This suggestion is based on the reasoning that the automatic age increase is given in regard to the fixed disability on the premise that such worsens with increased age, and the automatic age increase provision was implemented to take care of this worsening on an automatic basis. Accordingly, in the illustration given above, the pensioner should receive three 10% increases bringing him to the total assessment of 80% at age 59. In addition he should be entitled to the 10% he has been receiving all along for deafness. This 10% assessment should not deprive him of benefits arising from increasing age for his other disabilities.

Payment for Consequential Disabilities Not to be Affected by Automatic Age Increase

It would appear to your Committee that, under existing Pension Commission policy, a favourable consequential ruling might not always result in additional pension, where the pensioner had already reached the maximum of 80% by one or more automatic age increases. Your Committee noted a decision taken at a general meeting of the Commission under date of September 3, 1953, as follows: 18

COMMENT

Where a related condition is in a different part of the body or involves another system, adjust wound to not more than 80% and add related condition.

This would seem to apply to a pensioner who had reached a maximum of 80% through a combination of the assessment for his pensioned condition plus automatic age increases. If the Commission then gave a favourable ruling in regard to a consequential condition in a different part of the body, it should be possible for the pensioner to receive additional pension in excess of the 80%. It would seem, notwithstanding, that in some instances the Commission does not assess the consequential disability. That is to say, although the Commission rules that the consequential disability was related to the pensioned condition, it rules also that the consequential disability is to carry the "same entitlement" as the original disability, with the result that the consequential disability is not assessed for pension purposes. The following case is cited as an example: 19

Former Decisions: 1. Amputation left thigh middle third,
G.S.W. - Incurred during service (BPC)

Present Application: Consequential Ruling re: Scoliosis as
consequential to the pensionable disability.

Decision of the Commission Service: 7.9.15 to 28.1.20
CANADA, ENGLAND and FRANCE

This veteran is pensioned for amputation left thigh middle third from gunshot wound, incurred during service. This has apparently developed a scoliosis because of the amputation of the left leg which is with the prosthesis now shorter than the right. It is therefore felt that this is consequential to the pensionable disability.

COMMENT

The Commission Scoliosis -
rules:

Consequential to the pensionable disability of amputation left thigh middle third for gunshot wound and to carry the same entitlement. Effective 12 months prior to date of this decision.

In the case in question, the pensioner is entitled to a pension of 80% in the Table of Disabilities as follows:

Loss of thigh, middle third	70%
Increase in accordance with "automatic age factor"	10%
Total	80%

This 80% has been determined by the Pension Commission as the extent of the pensioner's disqualification to engage in the unskilled labour market. His condition of scoliosis would presumably disqualify him further in the matter of employment as an untrained labourer. In this regard the following opinion was given by the surgical specialist of the Department of Veterans Affairs, in respect of his condition. 20

I feel that this man's low back complaint is with physical substantiation, being consequent upon the amputation of the left lower extremity at the level described, and that the resultant disability in this regard, is real and of modest proportions. Lengthening of his prosthesis in the measure of about $\frac{1}{2}$ " might help this man. However, broadly speaking, the complaint for which he is referred, is a very common one with persons with lower extremity amputation, and I feel that it is consequent upon the abnormal stressing of the spine at this level, which is inevitable with the use of a prosthesis.

The file indicates that when the ruling was given on November 10, 1949, to the effect that the condition of scoliosis was consequential upon the amputation, this condition was not assessed by the Commission.

COMMENT

Your Committee considers that in all such cases the condition should be assessed and the file should show whether or not that condition carries an assessable degree of disability. If it does, the pensioner should be entitled to receive pension in excess of the 80% in accordance with the policy of the Commission, agreed to under date of September 3, 1953. *

Your Committee has made a recommendation under the Section dealing with Consequential Disabilities to the effect that, where such are accepted by the Commission as being related to a pensioned disability, they should carry a separate entitlement. The same principle should be applied in regard to an assessment for consequential disability where the pensioner has received one or more increases through automatic age increase.

* See page 693 hereof.

AUTOMATIC AGE INCREASEREFERENCES

1. Canadian Pension Commission, Table of Disabilities, Page 11, Para. 2.
2. Minutes, General Meeting, Canadian Pension Commission, April 14, 1954.
3. Proceedings of Committee Sessions, Volume II, Page K-7.
4. Ibid, Volume II, Page K-9.
5. Ibid, Volume II, Page K-36.
6. Canadian Pension Commission Routine Instruction No.66, January 25th, 1938.
7. Minutes, General Meeting, Canadian Pension Commission, February 5th, 1948.
8. Minutes, General Meeting, Canadian Pension Commission, June 29th, 1950.
9. Minutes, General Meeting, Canadian Pension Commission, April 12th, 1954.
10. Minutes, General Meeting, Canadian Pension Commission, September 1st, 1954.
11. Minutes, General Meeting, Canadian Pension Commission, April 3rd, 1958.
12. Minutes, General Meeting, Canadian Pension Commission, September 9th, 1965.
13. Canadian Pension Commission subject file, Section 28, Automatic Age Increase.
14. Canadian Pension Commission Routine Instruction No.66, January 25th, 1938.
15. Letter, dated January 26th, 1938, from Chairman, Canadian Pension Commission to J.R. Bowler, General Secretaries, Canadian Legion, Canadian Pension Commission, Subject File on Automatic Age Increase.
16. Canadian Pension Commission Directive, March 22, 1966.
17. Canadian Pension Commission, Subject File 153.1.2A, Volume II.
18. Minutes, General Meeting, Canadian Pension Commission, September 3rd, 1953.
19. Ruling, November 10th, 1959, Committee Case File No.3.
20. Intra-Departmental Memorandum, December 30th, 1959, Committee Case File No.

CHAPTER 19
AWARDS OF LEGAL DAMAGES
OR WORKMEN'S COMPENSATION

GENERAL

LEGAL DAMAGES

Section 20 (1) of the Pension Act provides in general terms that, where legal damages may be paid as the consequence of circumstances which caused death or disability for which, in addition, there may be a requirement to pay pension under the Pension Act, the amount of such legal damages shall result either in a reduction of pension payable under the Act or alternatively the damages shall be paid to the Crown, if pension is to remain in payment in full.

Section 20 (2) provides authority for the Pension Commission to require that the pension recipient take steps to enforce the liability, and makes provision to indemnify that person for costs incurred.

These Sections read as follows:

20 (1) Where a death or disability for which pension is payable is caused under circumstances creating a legal liability upon some person to pay damages therefor, if any amount is recovered and collected in respect of such liability by or on behalf of the person to or on behalf of whom such pension may be paid, the Commission, for the purpose of determining the amount of pension to be awarded shall take into consideration any amount so recovered and collected in the manner hereinafter set out.

20 (2) In any such case the Commission may require such person or anyone acting on his behalf as a condition to the payment of any pension, to take all or any steps that it deems necessary to enforce such liability and for such purpose shall agree to indemnify such person or anyone acting on his behalf from all or any costs incurred in connection therewith.

The types of case in which the above sections are involved are explained hereunder:

Widow of pensioner: When a pensioner dies of causes attributable to his service, his widow is entitled to pension. Where pension is in payment at 48% or higher, and the pensioner dies from causes other than his pensionable

General

disability, provision is made in Section 36 (3) of the Act for payment of pension to the widow in the same manner as if the pensioner's death was due to service. Should circumstances of the pensioner's death create a legal liability on a third party for the payment of legal damages, the Commission must require the widow to proceed with an action to enforce the liability. Where legal damages are awarded, the amount must either be deducted from the pension payments or alternatively paid to the Crown.

Widow of Member of the Forces: Where a member of the forces dies under circumstances which create a legal liability for payment of damages by a third party, and which also are such that a pension can be paid under the Pension Act in that the death was related to service, the Act makes certain provisions concerning legal damages. Firstly, the widow must institute an action against the third party. Secondly, if legal damages are awarded, the widow must elect either to accept these damages, in which case the pension would be reduced accordingly, or alternatively the damages are paid to the Crown and the pension is paid to the widow at the full rate provided in the Act.

The following example is given of this type of case:¹

Man accidentally killed on December 17th, 1951, in motor vehicle accident whilst on duty. Death ruled attributable to service.

Deceased left surviving a widow, aged 31, and a child, aged six years and eight months. Pension awarded the widow and child with effect from the day following death subject to review in the event that damages were recovered.

Widow instructed to institute an action for damages and for this purpose the Commission indemnified for costs.

Widow retained a solicitor and commenced an action. The action was instituted in the Province of Quebec and the Rolls in the Court in which the action would be heard were badly congested.

General

Offers of settlement were made to the widow's solicitor by the solicitors for the insurers but rejected as insufficient. Finally, in the Spring of 1958, an offer acceptable to the widow was made and approved by the Commission and a settlement effected out of Court.

As at April 1st, 1958 the capitalized value of the widow's pension was \$24,444.00 and the capitalized value of the child's pension as at the same date was \$1,941.33. The settlement yielded the widow net damages of \$11,050.00 in her own behalf and her child \$3,400.00 net. Relating the net damages to the capitalized value of the widow's pension necessitated a reduction of \$52.00 a month with effect from April 1st, 1958 in the pension being paid her at the statutory rate of \$115.00 a month in the event she elected to retain the damages. She so elected and her pension was accordingly reduced. As the net damages recovered on behalf of her child were in excess of the capitalized value of the pension on her behalf and as such damages were retained, her pension, which was in payment at the statutory rate of \$40.00 a month, was discontinued effective April 1st, 1958.

Pensioner Injured: Where a person in receipt of pension is injured under circumstances creating a legal liability for payment of damages, and the circumstances are of the nature, also, where additional pension may be payable by reason of the fact that the injury is deemed to be consequential upon a pensioned condition, Section 20 of the Act applies. That is to say, the pensioner is required to institute action against the third party and if legal damages are awarded, the additional pension for the consequential disability cannot be approved, unless the amount received as legal damages are paid to the Crown.

Member of the Forces Injured: Where a member of the Forces is injured under circumstances creating a liability for payment of legal damages, and where such circumstances are of a nature that payment can be made under the Pension Act in that the disability is related to service, Section 20 of the Act applies.

General

In such case, the member is required to institute legal action and any amount paid as legal damages would result in a reduction in pension under the Pension Act or alternatively would have to be paid to the Crown.

WORKMEN'S COMPENSATION

Section 21 of the Act provides that, where pension is payable under the Pension Act and compensation in respect of the disability or death is payable also under Workmen's Compensation or similar legislation, the amount involved is applied to reduce the pension or alternatively, is paid to the Crown. This Section reads as follows:

21. Where a disability or death for which pension is payable is caused under circumstances by reason of which compensation is payable in respect of such disability or death under any provincial Workmen's Compensation Act or legislation of a similar nature either in the place of, or as additional to, or apart altogether from any amount that is recovered or collected in respect thereof under Section 20, if any compensation is awarded to or on behalf of any person to or on behalf of whom such pension may be paid, the Commission, for the purpose of determining the amount of pension to be awarded, shall take into consideration any compensation so awarded in the manner hereinafter set out.

The types of case in which Section 21 is applicable are given hereunder in illustration.

Widow of Pensioner: Where the pensioner dies, and pension is payable to his widow either by reason of the fact that the death is due to service, or alternatively because pension was in payment at 48% or higher and, at the same time, such death is compensable under Workmen's Compensation or similar legislation, Section 21 of the Act applies. The widow is required to elect whether or not she desires to continue pension in payment under the Pension Act and, if so, any payments under Workmen's Compensation or similar legislation would serve to reduce her pension or would alternatively have to be paid to the Crown.

General

Widow of Member of the Forces: Although it would not be common, the circumstance could arise where a member of the Forces loses his life under conditions which would qualify his widow, not only for an award under the Pension Act, but also for an award under Workmen's Compensation or similar legislation. In such instance Section 21 of the Act would apply, and the widow would have to elect either to receive the amount paid from compensation source and have her pension reduced accordingly, or, alternatively, such amount would have to be paid to the Crown. An illustration of a case of this nature is given on page 724 hereof. (Case of Col. F.)

Pensioner Injured: Where a person in receipt of pension under the Pension Act is disabled under circumstances which can qualify him for an award under Workmen's Compensation, and the same injury can qualify him for additional pension under the Pension Act, Section 21 would apply. The pensioner would be required to elect either to receive the Workmen's Compensation award and have his pension reduced accordingly, or alternatively the Workmen's Compensation award would be paid to the Crown.

An example, identified herein as Case No. 5, is quoted hereunder: ²

This veteran was granted entitlement for malaria and sacro-iliac strain, right, by Commission decision of 4.10.54, effective 19.7.54, and pension in respect of the low back condition was paid at the level of a 10% assessment. On 21.5.57 he was admitted to Sunnybrook Hospital having suffered that day an acute episode while carrying a 98-lb. fruit crate when his right foot dropped about 12" when he missed a step. He remained in hospital under Section 5 (treatment for the pensionable disability) until 14.6.57 when he was placed on outpatient allowances effective the following day, with final discharge on 28.6.57, some five weeks after the back was re-injured.

On re-board following discharge from hospital, assessment was increased to 20%. It is of interest to note while in hospital, the experts felt the best diagnosis was degenerative disc disease, and indeed the Pension Medical Examiner suggested a change in diagnosis, but presumably the Medical Advisory Branch at Head Office felt no useful purpose would be served.

General

On the re-board for assessment purposes completed on 18.8.58, it was felt there had been an improvement in the back condition and assessment was therefore reduced from 20% to 15%, effective 1.2.58.

Very shortly after this time, the Workmen's Compensation Board of Ontario forwarded a waiver from the veteran and a request that the Department furnish their Board with all relevant medical information in connection with a back disability. This material was furnished, and in February, 1959, the Chief Medical Officer, Workmen's Compensation Board, advised the Commission that this veteran had suffered a compensable injury to his back on 21.5.57 and after recent examination by the Board's Officers, it was the intention of the Board of giving him a small award amounting to 5% for aggravation of a pre-existing condition. On receipt of this information, the Commission ruled that Section 21 of the Pension Act applied and total pension payments must therefore be reduced by the amount of \$11.25 per month, i.e. the monthly rate at which compensation payments were made, noting meanwhile, that the Compensation Board considered this a permanent disability award of 5%.

Pension payments continued in accordance with the above allocation until 1965 when it came to light that on 17.10.62, the Workmen's Compensation Board had written to Mr. _____ to say that it was the policy of the Board to make a lump sum payment if the monthly pension is \$15.00 or less and the percentage of permanent disability is not expected to increase. They further advised a total of \$2,272.50 stood to Mr. _____'s credit in their pension fund, and a cheque for this amount was sent to him. (It was said monthly pension payments would cease forthwith.) On receipt of this information, the Commission by decision of 9.7.65 ruled (under the provisions of Sections 21 and 22(2)) to reduce monthly pension payments by the amount to which the veteran would be entitled had the total final payment been capitalized as of the date it was received, and thus the monthly deduction was adjusted from \$11.25 to \$10.07; this present deduction is still in effect as is the assessment of 15%, and under the new rate, Mr. _____ should receive \$68.10 less \$10.07.

You will note this veteran is entitled to receive pension payments at all times in accordance with the disability in his back as found on medical examination from time to time, subject however to the recovery of \$10.07 per month as outlined. Although the Commission realizes some of the increase in disability, particularly as the man grows older may well be due to that portion of the disability the result of an industrial accident, it is not considered practicable or realistic to attempt to assess this factor, and therefore, the portion of disability assessed against the industrial accident remains constant and any increase is covered by pension payments.

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Procedure for recovery:

Section 22 of the Pension Act sets out the procedure under which pension is reduced or recovery is made by the Crown and reads as follows:

- 22(1) Where any amount so recovered and collected or the capitalized value of any compensation so awarded, or both, is greater than the capitalized value of the pension that might otherwise have been payable under this Act, no pension shall be paid.
- 22(2) Where any amount so recovered and collected or the capitalized value of any compensation so awarded, or both, is less than the capitalized value of the pension that might otherwise have been awarded under the provisions of this Act, a pension in an amount that, if capitalized, equals the difference between such amount or the capitalized value of such compensation, or both, and the capitalized value of the pension that might otherwise have been payable under this Act, may be paid.
- 22(3) If any amount so recovered and collected, or any part thereof, is paid to Her Majesty, a pension that, if capitalized, equals the amount so paid but is not in any event greater than the total pension that, apart from this section, would be payable under this Act, may be paid.

The policy of the Commission, when action may be required under Section 21 or 22 following the death of a pensioner or a member of the Forces, is to put pension into payment for the widow and children, and to review the award and make any adjustments which may be necessary when legal damages are recovered or compensation is awarded. This is explained in the following extract from memorandum to the Chairman of the Pension Commission by K.M. Macdonald, Secretary and Legal Adviser of the Commission, under date of May 8th, 1952:³

It is to be observed that the Commission in any application in which Section 18 might apply, would be perfectly justified in deferring an award of pension until such time as any action involved or claim for compensation had reached a finality and, when this time arrived, determining the amount of pension that might be paid in the light of the damages or compensation recovered and collected. To adopt this course would, however, work a hardship on the applicant. In the experience of the Commission in cases of death the widow and children are usually

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left without adequate resources and in view of the fact that there might be considerable delay in an action coming to trial, to defer an award of pension pending the outcome of the action would work genuine hardship on the applicant. For this reason the practice of the Commission is to make an award if the circumstances justify and to direct that such award is made subject to future adjustment under Section 18 if it appears that the provisions of the Section apply in the particular case. This has the effect of relieving any immediate distress that the applicant might be suffering.

When the damages are recovered or compensation is awarded, the Commission review the award of pension and make the necessary adjustments.

The Commission's policy, in regard to the situation where a widow is required either to accept payment of an award of legal damages or continue to receive full pension, is to permit the widow the following elections:⁴

- (a) Of retaining the full net settlement resulting in monthly deductions from current Widow's pension of an amount relative to that which the sum retained bears to the capitalized value of the pension; or
- (b) Of retaining part of the net settlement and paying the balance into the Commission, in which case monthly pension award would be reduced by a lesser amount than that set out in (a) above, the actual amount of such deduction being dependent upon the amount retained; or
- (c) Of paying into the Commission the full net amount of the settlement in which case Widow's pension is awarded at full current rates.

Where the widow re-marries, a gratuity equal to one year's pension is paid under Section 45 (1) of the Act. Where a widow accepted the option of paying in the full amount of a net settlement under (c) above, the gratuity would be twelve times the current monthly payment of widow's pension. Where a widow elected option (a) or (b) the gratuity would be in a lower amount, dependent upon the monthly deduction in each case.

In determining the amount of a refund where a widow re-marries who had elected under option (c), calculation is made to determine the total amount that would have been deducted from her pension had she originally elected

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under option (a). Should this amount be less than the net settlement previously paid by her into the Commission, she would be refunded the difference. In the case of a widow who elected under option (b), the calculation would be made to determine the difference between (1) the total amount deducted from her pension to date of re-marriage and (2) that amount which would have been deducted from her pension had she elected under option (a). Should the difference between these two calculations be less than that portion of the net settlement originally paid into the Commission by her, she would be refunded the difference.

When the amount of damages collected is greater than the capitalized value of pension which might otherwise have been payable under the Act, and the pensioner retains the whole of the damages, it is the policy of the Commission to cancel the pension as from the date of the award, and to recover any payment.

Under date of December 20th, 1951, the Commission considered the status of a pensioner when the basic scale of pension was increased to the extent that would result in the capitalized value of the pension, if in payment, being greater than the compensation award. The Commission decided: 5

If, in any case settled under the provision of Section 18 and the following relevant sections of the Act (now 20,21,22) the beneficiary makes application to the Commission for re-consideration of the settlement according to increased benefits available under the Act, the Commission may consider such application and, if indicated, adjust in accordance with the circumstances.

Actions Against the Crown:

The Pension Act provides that no action or other proceedings shall lie against the Crown in respect of injury, disease or aggravation thereof resulting in the disability or death in any case where pension was awarded or is awardable under the Pension Act. This provision is directly related

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to the application by the Commission of Sections 20 and 21. It is found in Section 76 of the Act which reads as follows:

76. No action or other proceeding lies against her Majesty or against any officer, servant or agent of Her Majesty in respect of any injury or disease or aggravation thereof resulting in disability or death in any case where a pension is awarded or awardable by the Commission under or by virtue of this or any other Act in respect of such disability or death.

An explanation of the inception of this Section of the Act will be found on page 758 hereof.

REPRESENTATIONS AND EVIDENCE

Your Committee received a considerable number of representations from veterans organizations concerning this question.

The National Council of Veterans Associations in Canada The National Council submitted the following recommendation:⁶

Recommendation No. 3

That Sections 20, 21 and 22 of the Pension Act be amended to provide that, where a pensioner in Classes 1 to 11 is killed as a result of the negligence of some person and damages are obtained by civil action or settlement, the amount of damages so recovered should not affect the widow's pension to which she is entitled as of right under Section 36, subsection (3) of the Act.

COMMENTS:

Under the present practice and legislation, there is no provision to allow damages to the widow of the pensioner in Classes 1 to 11, who as a civilian, is killed as a result of negligence of some person, without a reduction in the widow's pension. Even what is known in law as special damages, that is funeral, hospital and medical expenses, ambulance charges, etc. are not allowable to the widow without reduction in her pension.

These sections may be applicable where the man was in uniform and suffered injury or death from the same tortious act which established the pensionable disability.

We suggest, however, that these sections should not apply where the pensioner as a civilian later suffers a second injury by reason of a tortious act that has no connection with service. Should a pensioner in classes 1 to 11 be killed under these circumstances his widow is already entitled to a pension as of right as a result of her husband's previous service-incurred disability. She should be entitled to whatever damages may be applicable as a matter of civil right as a result of the second injury in civilian life.

It has been the practice of the Canadian Pension Commission even to retain damages for injuries which bear no relation to a pensionable disability. For example, if a veteran pensioned for total blindness as a result of enemy action should later lose a leg in an automobile accident in civilian life, the Pension Commission can claim and retain all civil damages arising out of the second civilian injury for loss of the leg.

Representations and Evidence

We submit that this provision is grossly unfair. Sections 20 21 and 22 should be applicable only to active service personnel and to situations whereby the same injury gives rise both to pension entitlement and to civil damages.

Sir Arthur Pearson Association of the War Blinded: A prepared brief

from this Association dealt with these Sections of the Act as follows: 7

Wards of the State

The original intent of Sections 20, 21 and 22 of the Pension Act was to cover disabilities incurred by members of the armed forces while serving in uniform, and certainly was not meant to apply to the war disabled receiving a C.P.C. pension (war disability compensation). The latter was purely an interpretation by the C.P.C. In the late 50's the writer presented the following question to a Parliamentary Commission: If I were a 100% pensioner for blindness, lost both my legs through the negligence of some car driver and following Civil Court Judgment was awarded \$50,000 damages, would I have to turn this money over to the Receiver General, or have my pension reduced by an amount based on my life expectancy? and the answer was - 'Yes'. This definitely places us in the onerous position of being Wards of the State. We have, through the National Council, a concrete example of a widow who had to make a decision between the widow's pension, or the award of Civil damages, and chose the former, not even being permitted to deduct the cost of the ambulance, lawyer's fees, etc. from the cost of the accident and Civil action. We can fully understand and appreciate the necessity for such a provision within the Act for members of the armed forces in uniform where their injuries are created by civilian accident or neglect.

Following discussion with the Committee, Mr. F.J. Woodcock, Secretary of the Sir Arthur Pearson Association, clarified his views as follows: 8

If a man is in uniform or in civy street and he is entitled to a pension he should darn well receive it, even though he was in uniform and something destroys his ability from now on to earn a living. He is thrown out of his present vocation, which is Army life, Navy life-- I don't know what they are going to call these new chaps at all-- or whether he was killed whether it should affect his widow. Now, I don't think it should; in other words, if someone else is to blame then the widow should benefit; and if you write down in black and white and say if this, that, or the other thing happens to you, you shall get, you shall receive so-and-so, then they should and shall receive it, regardless of what anybody else wants to contribute. If you wanted to take up a local fund and collect

Representations and Evidence

\$20,000 for the poor widow, she should be able to receive it, but it should not in any way affect the amount of compensation that is laid down within our rules and regulations.

Canadian Corps Association: Mr. E.J. Parsons, Dominion Pension Advocate of the Canadian Corps Association expressed the opinion that at the time of inception, the intention of these Sections was to "restrict the payment of dual pensions".⁹ He continued:

I don't feel that a serving member of the armed forces should have the restriction placed upon him or his dependents, that any award of damages paid by a third party should be taken away from them, any more than, let us say, a civil servant or any other person on the street who may be entitled to some consideration for damages, for injury or death. I don't feel that it is right that they should be penalized that way.

I would restrict this clause to eliminate only the payment of dual pensions, not to exceed the higher of the two pensions, whichever that amounted to. That would seem to me to be the spirit behind this clause.

In speaking to the effect of Section 20 in regard to legal damages payable to a widow, Mr. Parsons stated:¹⁰

I don't feel that the third-party liability should in any way interfere with that woman's right as a widow of that serviceman to receive pension, if his injury or death was related to his service disability, or his service, as the case may be. If she has the legal right as a citizen to claim against any third party or parties regarding responsibility for her husband's death, she should have the privilege of securing those as the courts may see fit to award the same as any other widow.

Army, Navy and Air Force Veterans in Canada: The prepared brief from this Association recommended as follows:¹¹

That the portions of Sections 20, 21 and 22 of the Act which relate to the death of a pensioner, classes 1 to 11, caused by the negligence of some person, be deleted from the Act.

Comment: When a pensioner, classes 1 to 11 is killed, or incurs an additional disability, as a result of the negligence of some person, Canada receives the damage settlement or judgment of a civil court, because under these sections

Representations and Evidence

the widow or the pensioner is required to elect if the amount of the settlement or judgment is to be retained and suffer a reduction in pension, which is granted as a right under the Act, or turn the whole settlement or judgment over to the Receiver General of Canada. There is no provision whereby the Canadian Pension Commission may allow the widow or pensioner to keep what is known as special damages, i.e. hospital, medical, ambulance and funeral costs or damage to an automobile in which the pensioner may have been riding.

Subsection 3 of Section 24 of the Pension Act provides that no pension shall be "charged or attached", and it is our opinion that the present interpretation of Sections 20, 21 and 22 is contrary to subsection 3 of Section 24. We do not believe that the interpretation was the intent of Parliament or is the wish of the Canadian people. We suggest that the present position is that Canada profits in dollars and cents every time a pensioner in classes 1 to 11 is killed or incurs an additional disability as a result of the negligence of some person.

Mr. J. Ewasew, executive officer of the Army, Navy and Air Force Veterans in Canada commented on these sections, as follows: ¹²

Frankly, sir, you should remove the whole section and throw it away. I don't think it should be in the Act at all. The whole thing as far as we are concerned is wrong to begin with. We feel that a man who receives a pension, receives a pension by right of service and this is his and his right alone.

Whatever happens to his body after that and if he wishes to claim third party damages for it then that is his business and he should be entitled to receive it because we have often said about the man who works in the factory with an artificial leg and he falls into the machinery and loses his hand and we can say, perhaps that he is also entitled to consequential disability because if he had both legs he would not have fallen in the machine and therefore he would not have lost his hand, but by doing so he did and he is also entitled under the Act for compensation for his hand and I don't think that the Government has any claim on that particular injury or if he wants the consequential disabilities he should be entitled to receive them.

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If I may add, Mr. Chairman, one starts off with the pension, benefits of compensation for an incapacity incurred within the framework of the Act in the service of one's country, then it should be directly related to that incapacity as one does in any assessment of physical injuries and that the additional injury attained is no causal connection between the incapacity incurred in the service for your country which is able by this Act and subsequent injury incurred, whether it be either under the purview of the Workmen's Compensation or third party liability in a situation with insurance.

May I add an example? In civil injury cases it is no defence for the third party to raise that, I have already collected insurance. It is no defence either for the very simple reason, as you well know, the third party is not to benefit by it, the manner in which I have arranged my benefits, and I have suffered as a cause of his wrong-doing. In this situation, why should the Government of Canada, quite frankly, legislate for the assignment and the taking over of the award simply because an additional suffering, an additional incapacity has been incurred as a result of another injury? Then you start falling into problems, you cannot differentiate as far as those events are concerned. They take over the award for pain and suffering and so forth. There should be no relationship there at all.

The Committee considers it would be helpful to quote the following discussion on this point.¹³

Mr. Justice Woods: Would an award for damages in the normal course of events be expected to make allowance for the man's particular condition having been pensionable, that is a pensioner might have a shortened expectation of life. He is incapacitated so that his earning ability is, in many instances, restricted, compared with someone who is not a pensioner, but does this not tend to keep awards down?

Mr. Ewasew: If so, then it further injures the pensioner.

Mr. Justice Woods: This is my point.

Mr. Ewasew: Because unless it is clearly brought out in a situation like that as to the difference between prior injuries and what this has done, and the possibility of complications as the result of that in the future from the slight, little accident he just had, aggravated the pensioner, you are running into a hornet's nest of problems and it compounds pensioners prejudices under those cases.

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Mr. Lundberg: And also to the widows.

Mr. Ewasew: Even if there is a jury they are in a situation where there is a third party liability, the award would be less than he would normally receive. He is already in receipt of a pension under the Pension Act for an already existing incapacity, etc., and they would tend to mitigate the situation because of the third party.

Judge Lindal: Following upon what you have said and also bearing in mind that there is a school of thought, wrong or right, to the effect that double pension should be avoided, we have heard that you should not draw a pension under the Workmen's Compensation and in order to indicate clearly that a distinction has been made, I have found it useful when sitting on this Bench to refer to extreme cases as helping to see the difference.

Now let's take the exceptional cases of damages. The theory, or the settlement, punitive damages are taken into consideration. The third party was driving at 100 miles an hour at the time he hit the war veteran or the pensioner. The man doing the damage completely lost his temper and picked up an instrument, a most dangerous instrument, so that it became vicious. As the result of that either the jury or the other party in case of settlement decide that if he was entitled to \$20,000 we will add another \$5,000 because of the vicious nature of this. Well, surely none of that \$5,000 should go to her Majesty the Queen. Now if the 20 and 21 -- I would like to ask you that. Do you think that any of that \$25,000 should go under 20, 21 and 22 to the government? You see what I mean?

Mr. Ewasew: Your Honour, may I answer that? Permit me. If you are first of all on punitive damages because the jurisdiction which I practice in, it is not allowed, or personal. And I think the Commission must take that into consideration too, that although the Act is a standard for all the country some sections where the type of damages you might get into common law, let us say in the Province of Ontario, you can't get in Quebec. There will be no allowance in Quebec for punitive damages, no allowance also for solatium dolores.

If there were, I would argue strongly the Queen should not be getting one dollar. Why should she? You are one step further under the question of pension. You say the principle here is that one should not double up on a pension. There should not be two pensions providing you keep our laws on communications clear. So Workmen's Compensation is a pension in a sense. It is a compensation for injury sustained under certain circumstances and certain clearly defined industries for which the employer contributes and pays. Therefore, indirectly the treasury and the government is benefiting by legislation on the employer to provide compensation for his employees.

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The jobs we are talking about that come under the purview of this Act, not many veterans under the purview of this Act, people that you are talking about today, find themselves in jobs which come under Workmen's Compensation as such. Generally speaking, they find themselves in jobs which are elected as to whether the employer wants to come in, it is obligatory and in that event very often is not -- it is not as in a contributory portion on the part of the employer. Therefore from point of view of his own safety he is providing for a situation in which the result, the net savings if you wish, for each is provided for, in the event of some catastrophe goes over to the Queen and there is no relationship whatever between that and I think the intention of this Act to compensate a man for the incapacities incurred during service.

Mr. Justice Woods: Would there appear to you to be much if any real difference between Workmen's Compensation and a contributory insurance plan where the employer puts in half the premium and the workman himself puts in half the premium?

Mr. Ewasew: Actually sir, there are none.

Mr. Justice Woods: In each case together they are buying something?

Mr. Ewasew: Correct.

Mr. Justice Woods: In one case they are compelled to do it and in the other case they do it of their own volition?

Mr. Ewasew: It is the only difference in principle, one is obligatory in certain industries in which the employer does himself and has to give this and there is the other section of the Workmen's Compensation where there is the elective portion but in either event you can use this broad principle. One is obligatory and the other is entirely elective, where you have group insurance.

I was coming to that, where you have a group insurance system and the employee is contributing his portion. For example, I have a personal experience and I am an attorney for a hospital in Montreal, a great portion of our staff in the sense of the elevator operators are pension veterans. They are contributing a portion of their earnings to a group plan.

Now, he happens to get involved in an accident and has a third party liability claim under the terms--

Mr. Justice Woods: That is by him or against him?

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Mr. Ewasew: By him, under the terms of this Act and the award will have to be assigned or taken over by the Government of Canada according to Section 21 or 22 and in that sense or if the pension, to use a phrase, the word used in the Act which I prefer to call compensation, is reduced accordingly but where can you find any reason to justify the reduction?

If you think of this pension in terms of compensating for incapacities already received for -- let's put it working for your country -- no relationship whatever.

The War Amputations of Canada: This Association's prepared brief stated

as follows: ¹⁴

Recommendation No. 6 - Damages - Accidental Death

The Pension Act, Section 20, 21 and 22 provides that where a pensioner is killed as a result of the negligence of some person and damages are obtained by civil action, or settlement is made of the claim of the widow for damages, the amount of damages is taken into consideration in regard to the widow's pension which she has as of right under Sub-Section 3 of Section 36 of the Pension Act.

Under the present practice and legislation, there is no provision to allow the widow to retain the damages without a reduction in her widow's pension. Even what is known in Law as "special damages"; i.e. funeral, hospital and medical expenses, ambulance charges, etc. are not allowed to the widow without a reduction in her pension, if she accepts the judgment or settlement.

This provision is difficult to understand when contrasted with the situation where a pensioner is injured but NOT killed. A pensioner, severely injured in an accident caused by the negligence of another, is able to sue such other person and presumably recover from such other person damages for his out-of-pocket expenses, pain and suffering, such measure of disability as is attributable to the accident. In this situation there is no claim by the Government of a right of assignment of these damages in lieu of pension for a separate non-rated disability. There is no set-off damages in substitution for war disability compensation.

However, should the pensioner die as a result of such accident, the situation is completely changed. Present legislation provides that if his widow is successful in obtaining damages because of the accidental death of her husband, such damages are not to be the property of the widow. They are the property of the Government of Canada. If the widow takes such damages for her personal use, she must suffer a commensurate reduction in the compensation to which she is entitled as of right as the widow of such pensioner.

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The Government pointed out, on previous occasions, that an amendment to legislation which would permit a widow to retain monies paid as a result of a liability claim against a third person would place that widow in a "preferred position" to the widow of a serviceman whose death resulted from enemy action.

This Association considers that this comparison is not justified. In both instances the widow has suffered an irreparable loss for which compensation cannot be made through an award of monies. It would seem, however, that the argument that the widow whose husband's death was caused by the act of a third person should not be deprived of monies to which she might be entitled by reason of a damages claim, merely on the basis that the widow whose husband died from enemy action was not in a position to press a claim for third party damages.

The entitlement of a widow of a pensioner who dies from accidental death would seem to stand on its own merit. Had this pensioner been killed in action with the enemy, or had he died from his pensionable disability (or from other causes assuming the widow is in receipt of pension of 50% or greater) the Government would have had to pay widow's pension. The mere fact that he died by accidental means which made possible a third party liability claim should not be the cause of the payment of funds into the Federal Treasury, at the deprivation to the widow.

It is therefore, strongly recommended that immediate action be taken to amend the relevant sections of the Pension Act, to provide that damages arising out of the accidental death of a pensioner shall not be taken into consideration in relation to payment of pension to his widow.

This recommendation was amplified in an appendix which was filed with the Committee, reading as follows:¹⁵

Memorandum re: Sections 20, 21 and 22.

Please refer to the main Brief of the War Amputations of Canada, pages 9, 10 and 11. The application of these sections of the Act would seem to affect four specific cases as follows:

- (1) A serviceman who suffers an injury which arose out of or was directly connected with his service.
- (2) A serviceman who was killed for some cause adjudged to have arisen out of or have been directly connected with his service.
- (3) A pensioner in receipt of pension under the Act who suffers an accident which was consequential upon his pensionable disability.

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- (4) A pensioner under receipt of pension under the Act who is killed.

It is the opinion of this Association that a great deal of confusion has existed in regard to the provisions now found in the Act under Sections 20, 21 and 22. The original intent, as provided in the annotations to the proposed Bill in 1919, were:

- (1) An example of a soldier negligently run over by a street car who loses a leg. The street car company is liable in damages and the man can also qualify for pension under the Pension Act. The clause in the Act provided that the soldier must assign his right to legal damages to the Country. If more is collected by the Country than the capitalized value of the pension the soldier would receive the benefit. If less, the Country would bear the loss.
- (2) A second example was a pensioner in receipt of pension for loss of a leg employed in a factory. Owing to the disability he falls into a machine and loses a hand. The loss of the hand is due to the disability for which he is pensioned. He is also pensionable under this second disability, i.e., the loss of the hand. Under Workmen's Compensation he would also be entitled to compensation. The clause in the Act would prevent him from receiving both War Disability pension and Workmen's Compensation.

It can be presumed that, at least in part, this was an attempt to provide that:

- (1) A member serving in the Armed Forces should not be compensated from two sources for the same accident, i.e., pension under the Pension Act and legal damages; or
- (2) That a pensioner should not receive additional monies by reason of a second accident if in some way the second accident was consequential upon the injury resulting from the first accident.

We have been unable to find any reference to the origin of the application of the Act which provides that:

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- (1) The pensioner may not receive additional monies by reason of a second accident which is not consequential upon the injury resulting from the first accident; and
- (2) A widow may not receive additional monies by reason of a second accident was consequential upon the injury received from the first accident.

Some of the confusion in this matter presumably arises from "overlapping" definition of pension, Workmen's Compensation and legal damages. The following definitions are believed acceptable:

PENSION

The Pension Act, Section 2 (r) defines Pension as follows:

- (1) Pension means pension on account of death or disability;
- (2) Disability means the loss or lessening of the power to will and to do any normal mental or physical act.

Note: The Report of the Royal Commission on Pensions, 1922-24, Page 44, contains the following with respect to definition.

"When it came to be believed, however, that the pension was the payment of a debt upon contract, the amount of that debt had to be considered and the scales of pension were made ~~all~~."

It would appear, therefore, that Pension in the meaning of the Pension Act can be considered as a "payment of debt upon contract."

WORKMEN'S COMPENSATION

This is considered to be monetary compensation to an injured workman, or to his dependents if the injury proved fatal, although no wrongful act was committed by the employer. This principle is sometimes known as "liability without fault". (Source: Encyclopaedia Britannica).

Representations and Evidence

LEGAL DAMAGES

This is generally considered as an award of money as compensation for legal damages. The amount is usually based on the economic benefits which the injured, or his dependents if the injury proved fatal, could have expected to receive if the injury or death had not occurred. (Source: Encyclopaedia Britannica).

It is contended by the War Amputations of Canada that it is entirely permissible to pay a pension at the full rate entitled under the Act and in addition to pay Workmen's Compensation or legal damages.

It is the contention of this Association that the basis upon which some of the restrictive applications of this Act are founded is illogical, in view of the seemingly obvious fact that, in the meaning of the Pension Act (as it applies to war veterans and/or their dependents) the payment is made for reasons which are different to those which apply either in Workmen's Compensation or legal damages. It is suggested specifically that:

- (1) A pensioner injured in civilian employment should be permitted to receive pension at the full rate to which he is entitled under the Pension Act, and at the same time receive any Workmen's Compensation or legal damages to which he is entitled, even though the injury may have been consequential upon his pensionable disability.
- (2) A widow should be permitted to receive widow's pension under her rights as provided by the Pension Act, Section 36(3), and at the same time receive any Workmen's Compensation benefit, or legal damages to which she may be entitled.

Officials of the Association have discussed this matter with officers of the Canadian Pension Commission on many occasions in the past. We readily admit we have only our own records of these discussions and there is no intention here to draw inference from statements which the Commission officers may or may not have made. We recount these discussions only to testify to our own confusion which has developed over the years.

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PART A - ONE ACCIDENT; TWO SOURCES

The first statement which we have come to believe as being Commission policy is:

"A pensioner or his widow cannot be indemnified from two sources for a single accident."

To illustrate we cite the case of Major G. killed in a civilian airplane accident, while engaged in military service. His widow was faced with the alternative of accepting a damage settlement of \$8,000 and thus causing a deduction from her pension, or allowing the settlement to be paid to the Crown and avoiding such deduction from her pension.

The Commission has stated that if it were permissible for a widow in such instance to receive both the CPC Pension and the legal damages she would be in a preferred position to the widow whose husband was killed on active service. We find this statement open to question. Surely it does not matter that the widow of a husband killed in an accident which may result in legal damages might receive more money than the widow whose husband was killed on active service?

The following points should be explored:

- (a) The funds involved in the payment for legal damages in such instance do not come from the Federal Government.
- (b) If the legal damages are recovered by the Canadian Pension Commission this in effect represents a saving in monies for the Federal Government, but at the same time it is a denial of rights of the widow as guaranteed by the Pension Act in that she is entitled to full pension due to the fact that her husband lost his life by reason of an accident which is pensionable under the Act.

Note 1: Where a pensioner is injured in a second accident and the payment of legal damages is a possibility, points (a) and (b) above also apply.

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Note 2: It seems obvious that, where payments are coming from two different sources, consideration of the reason why these sources are making the payments is pertinent. To illustrate, in the case of Major G. the Canadian Pension Commission is making the payments because of the liability under the Pension Act. The insurer for the carrier in whose aircraft Major G. was killed is making payment because of a presumption of legal responsibility arising from the fact that this officer was killed while a passenger in a certain aircraft at a certain time and place.

PART B - TWO ACCIDENTS; TWO SOURCES

Another statement which we believe to be the policy of the Commission is:

"A pensioner or his widow cannot be indemnified from two sources for an accident which occurs subsequent to the accident which created the first pension".

Our understanding of the application of the Pension Commission in this regard is that compensation or damages are recovered by the Commission or alternatively pension is reduced if it is apparent that:

- (a) the second accident is some way consequential upon the first accident; and/or
- (b) the second accident could result in "double" payment, i.e., from the Canadian Pension Commission and some other source such as the Workmen's Compensation Board or as payment for legal fees.

Our contention is that the liability of the Canadian Pension Commission remains the same under the Act. If there is additional liability from Workmen's Compensation or from some second or third party, in regard to legal damage, the monies involved should be retained by the Pension Commission. We cannot conceive that the second accident should in any way affect the pensioners entitlement under the Pension Act.

This is, in effect, change of viewpoint on the part of the War Amputations of Canada, in that, in its past submissions, has been willing to concede (without admitting to their propriety) that the various applications of these sections of the Act should not necessarily be

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altered, but with one vital exception; i.e., that when a pensioner is killed, and the widow is entitled to pension by reason of Section 36(3) of the Act, and she is entitled also to legal damages arising out of the circumstances of her husband's death, she should be allowed to retain the damages, and receive pension at the full rate provided under the Pension Act.

In reconsideration of this matter, we are of the opinion that there are grounds to suggest that all applications of these Sections 20, 21 and 22 of the Pension Act may be improper; and are inconsistent with the purpose of pension as defined in the Pension Act when such purpose is compared with the intent of Workmen's Compensation or legal damages.

PART C: GENERAL

A third statement which we believe to be the policy of the Commission is:

"The pensioner cannot have it both ways."

It is presumed that this refers to the payment of pension under the Pension Commission and payment of compensation or damage from another source whether as a result of one accident or a second accident following upon a first accident which resulted in the initial pension.

We wish to contest this statement and would give the following example:

"A pensioner is killed and there is no liability from any other source. There is however, life insurance payable. This would involve payment from two sources, i.e., the Pension Commission and the life insurance company, resulting from either one accident or two accidents. There is no attempt, in this type of situation, to recover the life insurance, or alternatively to bring about a reduction in the pension."

A further illustration would be that where a pensioner is killed and as a result of his death, some interested party gives monies to the dependents or alternatively the death brings about the implementation of a Trust Deed which has the result of bringing monies to the dependents. In such instances the Commission does not and cannot make any claim upon these.

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We would wish to make brief references to the discussions of this matter at the Parliamentary Committees of 1959 and 1960. The officers of the Canadian Pension Commission were involved in these discussions, and in our view, influenced the trend which the discussions took. Moreover, certain legal interpretations contained in memoranda signed by K.M. MacDonald, the Legal Officer of the Commission, were submitted to the Committee and were published as appendices to the Report of the Proceedings of the Committee. We make this point merely to establish that we are here dealing with a question which is not solely a matter of legislation but also a matter of the application of that legislation, and the interpretation of the legislation by the Commission.

Royal Canadian Legion: The prepared brief commented on Section 20 of the Act as follows: ¹⁶

This Section provides that where death or disability for which pension is payable, is caused under circumstances creating legal liability upon a third person to pay damages, the Commission in determining the amount of pension to be awarded, shall take into consideration such compensation. If this is greater than the capitalized value of the pension that might have been payable, no pension is paid (Section 22).

It is our understanding that where judgement is secured as the result of litigation, a specific portion of the award is usually designated for "permanent disability". There is normally an additional amount described as "general damages" to compensate the litigant for pain and suffering.

From our observations the Pension Commission has never made any attempt to distinguish between the amounts awarded for permanent disability and that for pain and suffering. It has been their invariable practice to "lump" the amounts together.

We would therefore recommend either a change in the Commission policy in this regard or an amendment that only such compensation will be taken into account as relates specifically to "permanent disability".

The Legion made a further recommendation concerning Section 20,21,22 as follows: ¹⁷

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Whereas a pensioner under classes one to eleven of the Pension Act who is accidentally killed - his widow is penalized by having to return to the C.P.C. any financial compensation she may receive; therefore be it resolved that this convention petition the Government to delete Sections 20, 21 and 22 of the Pension Act to provide that the widow of the deceased pensioner will receive full benefit of any damages received in the event of accidental death of her husband and not be penalized under the relevant Section of the Pension Act.

During the discussion of these Sections, the Legion referred to a specific case¹⁸ of Col. F. who had been seconded to the United Nations by the Canadian Army for temporary service with the Truce Supervision Organization in Palestine. He died on May 26th, 1956, as a result of gunshot wounds incurred during a flare-up of hostilities. As a condition of service, the United Nations undertook the obligation of compensating the estate of officers who are killed on United Nations duty. Following this officer's death, the United Nations paid the widow the sum of \$17,472. She elected to retain the money and her widow's pension was reduced by the amount of \$82.64 monthly, presumably on the basis that the United Nations' award represented compensation payable in respect of Workmen's Compensation or similar legislation, and had to be taken into consideration by the Commission in accordance with Section 21 of the Act.

The Legion made representations to the Pension Commission, arguing that the United Nations' Award was not compensation in the meaning of the Act. On Dec. 30th, 1959, the widow appeared before three legal members of the Commission under the provisions of Section 7 (3), which provides for a personal appearance. She was represented at this hearing by her own solicitor and by representatives of the Legion and the Veterans' Bureau. The Commissioners reached the conclusion that the widow was entitled to be paid her widow's pension in full without deduction and the decision was

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referred to the Commission for a consideration. The Commission rendered its decision on May 8th, 1960, to the effect that the authority under which the United Nations awarded the compensation was in fact "similar legislation" within the meaning of Section 21 of the Pension Act, and the decision to reduce the widow's pension was confirmed.

Mr. Donald M. Thompson, Dominion Secretary of the Legion, gave his views as to the reasons for the clause in the Pension Act which provides for recovery of legal damages awarded the pension recipient, as follows:¹⁹

The basis that appears to have been stated down through the year is that the person who is injured off the battlefield or the dependent of a person who is injured other than on the battlefield should not be better off than the man who was killed -- than the dependant of the man who was killed in action. That seems to be the general statement that has been made down through the years as to the reason why this legislation is here.

And it would appear to be the feeling of our membership that there is no reason to continue this just because it has existed, and if someone can be a bit better off than the other -- that does not in any way alter the status of the dependant of the man who is killed in action or the man who was wounded in action to withhold from a person who collected other damages.

Mr. Jack McIntosh, M. P.: Mr. McIntosh referred to Sections 20, 21 and 22 as follows:²⁰

These sections are interpreted to mean that where an award of pension is approved, and at the same time an award of Workmen's Compensation or legal damages payable, the pensioner (or his widow) cannot retain both. Hence the pension is reduced accordingly or alternatively the amount from the other source is paid over to the Commission.

Veterans organizations have submitted complaints, particularly where the widow of a pensioner suffers the loss of either a reduced pension, or is deprived of the amount of legal damages or Workmen's Compensation.

Representations and Evidence

I agree with the veterans organizations in this, that if any other award is given, it is of no concern, or should not be considered in awarding a pension. The pensioner gets it by entitlement and nothing else.....

And the widow like-wise. There again, you cannot assess, in my mind, the amount of damage that has been done to that family because of the breadwinner being in service, nor the amount of problems that arise out of the death or disability of the pensioner.

Mr. McIntosh suggested that these Sections should be deleted from the Act.

Canadian Forces Headquarters: In a brief, submitted on behalf of the Chief of Defence Staff, the following comment was made concerning Section 21: ²¹

The Canadian Pension Commission has ruled that the United Nations payments are in the category of compensation "under any Provincial Workmen's Compensation Act or legislation of a similar nature" within the meaning of Section 21 and have deducted such payments from the capitalized value of any pensions awarded for such deaths or injuries. It is considered that the United Nations provision is not legislation because the United Nations is not a legislative body, and further that there is no similarity between the United Nations payments and payments under compensation legislation. It is contended that the United Nations payments are similar to life or accident insurance payments rather than Workmen's Compensation payments.

There has been some indication that the Commission may consider that these payments come under Section 20 as "legal liability upon some person to pay damages therefor". This view is also disagreed with. It is suggested that there is no legal liability on the United Nations to pay damages. Although there may be an agreement between the Canadian Government and the United Nations for the services of these members, there is no employment contract between the member and the United Nations under which the individual would have a legal right to sue the United Nations for damages arising out of his employment. Since, generally speaking, no blame can be attached to the United Nations or its employees for such injuries or death, there is in fact no legal liability for the United Nations to pay. Such payments should be considered merely as additional insurance and there is no provision in the Pension Act requiring payments of this nature to be deducted from pensions. Restrictions not legislated for should not be arbitrarily imposed. An example of problems of this type follows:*

* Canadian Force Headquarters brief referred to the case previously mentioned by the Royal Canadian Legion on page 723 hereof.

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Captain A. O. Solomon, Director of Personnel Legal Services, Canadian Forces Headquarters, commented in regard to Section 20 as follows: ²²

I would like to read in here a question as well on Section 20, the legal liability to pay damages.

Section 20 of the Pension Act is very broad and appears to include any and all amounts which the survivor may be awarded in court for the death of a husband, and any and all amounts which an injured person may be awarded.

Awards under the Pension Act for disability quite clearly, because of the definition in the Act, do not include any amount for pain and suffering. It appears equally clear that awards made to widows are to compensate her for lack of support.

In the majority of cases where a person is suing because of an injury, the award includes an amount for pain and suffering and, on occasion, the quantum for pain and suffering is specified by the court. This amount it is contended should not be taken into consideration or recovered by the Canadian Pension Commission.

In the case of death there are three possible heads of recovery.

- (a) Pain and suffering of the deceased before he dies;
- (b) Loss of expectation of life of the deceased;
- (c) Loss of future financial support.

The first two of these are really the right of action held by the deceased, which right is given to his dependents by the various Provincial Fatal Accident Acts or their equivalent. Amounts so recovered would appear to be clearly not the type of award which should be taken into consideration by the Pension Commission.

It would seem that Section 20 would require amendment in order to accomplish this object. Further, it would appear that there may, on occasion, be considerable difficulty in ascertaining what portion of any award is attributable to any particular head of damages.

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This matter could be solved by solicitors requesting courts to give a break-down, or perhaps by referring the matter to the court which gave the judgment. If this latter procedure could be followed, then perhaps, the Department of Justice could be asked to give a ruling on the percentages in any particular case.

Captain Solomon expressed the view that the only deduction under the Statute would be the loss of future financial support. He stated that he was not commenting on whether or not the Statute states a fair position, but was dealing merely with an interpretation of the Statute as it stands.

L'Association du 22ième Inc.: In a prepared brief, this Association recommended deletion of Sections 20, 21, 22 as follows: ²³

The Sections in the Act which direct the recovery of compensation benefits or damages to the veteran or the widow when he or she is entitled to both pension as of right under the Pension Act, and either compensation benefits or legal damages, should be amended.

This Association considers this is one of the iniquitous provisions in the Act. It is our understanding that if a service member is injured in an accident which is pensionable under the Pension Act, then under the same circumstances he would be entitled to legal damages by reason of a payment from insurance or other sources. The Pension Act requires that he either foregoes his right to the amount of legal damages or alternatively his pension would be reduced accordingly. The same situation exists where the member is killed, in that the widow is entitled to either a pension or legal damages, but not both.

Under the same provisions of the Legislation, the pensioner who is injured in a civilian accident which could mean an increase in his pension, due to that fact that the accident was consequential upon his pensionable disability, is unable to retain any amount of legal damages or Workmen's Compensation and at the same time claim for additional pension which is his by right under the Pension Act.

This Association has no desire to argue the legal ramifications of this provision. We consider it sufficient to state the premise that the man (or his widow) is entitled to pension as of right under the Pension Act. If there were other benefits accruing by reason of Workmen's Compensation or legal damages, the man (or the widow) should also be entitled

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to these. Death or injury represents the tragic and often costly circumstance in any family. It is considered that this is sufficient in itself without the Federal Government having to claim part of the financial compensation which may come to the veteran (or the widow) by reason of an employer having covered himself under Workmen's Compensation, or by reason of the fact that there are legal damages payable either from insurance, unsatisfied judgment funds or other sources to which the Federal Government makes no contribution.

Major Paul Clavel, Secretary of the Association, suggested that these sections should be removed from the Act. He stated: ²⁴

It should be made clear that when a man has a right to pension, he gets a pension; and no matter what comes afterwards, if there is an insurance covering a workman this should not be a factor in deciding whether the pension is granted or is denied, it's altogether independent of the fact that he gets a pension and it should not affect the pension.

Mr. H. W. Herridge, M. P.: Mr. Herridge commented on these Sections as follows: ²⁵

I don't agree with the principles involved in those two sections. I think if a man seeking a pension for disabilities incurred in service, and later his widow receives a pension because of disabilities incurred in a civilian occupation, she should be allowed to retain them.

Mr. Herridge spoke in regard to Workmen's Compensation as follows: ²⁶

Yes, and if he came under any compensation act, I think the widow is entitled to it also because this is based on the insurance principle, the employer and employee paying for the coverage on the insurance principle, and I don't think the application of another law should affect their right in that respect.

The Honourable Gordon Churchill P. C., M. P.: Mr. Churchill was asked by the Chairman for his views concerning the veterans organizations' objections to the provisions in Sections 20, 21 and 22 under which a pensioner or his widow were not permitted to retain both pension and an award of legal damages or Workmen's Compensation. The following discussion took place: ²⁷

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Mr. Churchill: Well, I agree with the veterans' organizations on that. I would not make the recovery. I sometimes wonder if some of these sections are not a carry-over from the depression years of the thirties. We are living in a different society now.

Mr. Justice Woods: Well, would you be in favour then of wiping these out in effect.

Mr. Churchill: Yes, I would.

Chairman, Canadian Pension Commission:

Mr. T. D. Anderson, in an appearance before your Committee under date of June 20th, 1966, discussed this matter in reply to a question from Judge Lindal. The following excerpt from the Minutes is included hereunder: 28

Judge Lindal: Have you any comments on Sections 20, 21 and 22? That is in regard to actions, successful actions?

Mr. Anderson: I personally have no strong feelings about these sections at all. I don't know whether I have ever explained the basis of the origin of that to the Committee or not but it is very simple.

It amounts to this: a man who is shot in the trenches in France takes what the Government will give him and he has no chance to sue anybody, whereas the man who comes back safely and gets a 50% pension and is later killed under circumstances where his wife as a widow sues a third party and collects, without these sections would get not only the full pension but would also get whatever the settlement was.

Thus it was felt in those days - the people in those days apparently had a great deal of sympathy for the man who got killed in the trenches and decided that nobody should have any advantage over his widow, and this was the basic reason for the sections in the first place. Whether that reason is still valid, I am not prepared to say.

As I say, I have no strong feelings.

Judge Lindal: You are more or less neutral?

Mr. Anderson: Yes.

HISTORY

provision for recovery of legal damages was in Section 19 of Pension Act of 1919, which read as follows: ²⁹

1. If a disability or death for which a pension is payable under this Act is caused under circumstances creating a legal liability upon some person to pay damages therefor, the Commission, as a condition to payment of the pension, shall require the pensioner to assign to His Majesty any right of action he may have to enforce such liability of such person or any right which he may have to share in any money or property received in satisfaction of such liability of such person.
2. The cause of action so assigned may be prosecuted or compromised by the Commission and any money realized thereon shall be paid into the Consolidated Revenue Fund of Canada.
3. Any money realized thereon in excess of the capitalized value of the pension awarded and the costs, if any, of the recovery shall be paid to the pensioner.

The annotation explaining this Section read as follows: ³⁰

This is an entirely new section. As was explained in connection with Section 11 the principle of insurance during the service was adopted in 1916 in so far as Canadian pensions were concerned. A number of accidents of various descriptions have occurred, and will continue to occur, in which the disability caused by the accident is pensionable and also entitles the soldier or sailor to damages or compensation from the person or company which was responsible for the accident. It is not reasonable that both pension and damages should be paid and the country, therefore, has reserved the right by this section not to pay pension unless the right to damages or compensation is assigned.

Example 1: A soldier is negligently run over by a street car and loses his leg. The street car company is liable in damages and the country must also pay a pension. Before pension is paid however, the soldier must assign his right to damages to the country. If more is collected by the country than the capitalized value of the pension the soldier will receive the benefit; if less is collected the country will bear the loss.

Example 2: A one-legged pensioner is employed in a factory. Owing to his disability he falls in a machine and loses a hand. Seeing that the loss of the hand is due to the disability for which he is pensioned he is also pensionable for the second disability. Under the Workmen's Compensation Acts in the various provinces he will also be entitled to compensation. Under this section he cannot receive both.

History

This Section was revised in 1927 to read:³¹

If a disability or death for which a pension is payable under this Act is caused under circumstances creating a legal liability upon some person to pay damages therefor, the Commission, as a condition to payment of the pension, shall require the pensioner to assign to His Majesty any right of action he may have to enforce such liability of such person or any right which he may have to share in any money or other property received in satisfaction of such liability of such person. The cause of action so assigned may be prosecuted or compromised by the Commission and any money realized thereon shall be paid into the Consolidated Revenue Fund of Canada. Provided that any money realized thereon in excess of the capitalized value of the pension awarded and the costs, if any, of the recovery shall be paid to the pensioner.

1927

The Commission had expressed doubt as to whether this Section applied to cases coming under Provincial Workmen's Compensation Acts.

1939

It was referred to the Deputy Minister of Justice in a letter from the Chairman of the Commission dated December 14, 1939,³² and in particular asked for advice on the following points.

- (a) Does Section 18 apply in cases coming within the jurisdiction of the several Provincial Workmen's Compensation Boards?
- (b) If the answer to (a) above, is in the affirmative, would an assignment of rights in such cases be binding upon a Workmen's Compensation Board?

Under date of December 29th, 1939, the Deputy Minister of Justice replied as follows:³³

In view of the foregoing it becomes evident that said Section 18 in its present form is really unworkable, as it does not enable the purposes for which it was apparently enacted to be effectually carried out. On the next occasion when amendments to the Pension Act are contemplated, it would possibly be advisable to have the section redrafted in such form as would make it possible for the Commission in determining the amount of pension to be awarded to take into consideration any award by way of damages or workmen's compensation which may have been made with respect to the disability resulting in injury or death on account of which pension is claimed.

History

These provisions were amended in 1941 to read as follows: ³⁴

1941

- 18.(1) Where a death or disability for which pension is payable is caused under circumstances creating a legal liability upon some person to pay damages therefor, if any amount is recovered and collected in respect of such liability by or on behalf of the person to or on behalf of whom such pension may be paid, the Commission, for the purpose of determining the amount of pension to be awarded shall take into consideration any amount so recovered and collected in the manner hereinafter set out.
- (2) In any such case the Commission may require such person or anyone acting on his behalf as a condition to the payment of any pension, to take all or any steps which it deems necessary to enforce such liability and for such purpose shall agree to indemnify such person or anyone acting on his behalf from all or any costs incurred in connection therewith.
- 18.A. Where a disability or death for which pension is payable is caused under circumstances by reason of which compensation is payable in respect of such disability or death under any Provincial Workmen's Compensation Act or legislation of a similar nature either in the place of, or as additional to, or apart altogether from any amount which is recovered or collected in respect thereof under the last preceding section, if any compensation is awarded to or on behalf of any person to or on behalf of whom such pension may be paid, the Commission, for the purpose of determining the amount of pension to be awarded shall take into consideration any compensation so awarded in the manner hereinafter set out.
- 18.B.(1) Where any amount so recovered and collected or the capitalized value of any compensation so awarded, or both, is greater than the capitalized value of the pension which might otherwise have been payable under this Act, no pension shall be paid.
- (2) Where any amount so recovered and collected or the capitalized value of any compensation so awarded or both, is less than the capitalized value of the pension which might otherwise have been awarded under the provisions of this Act, a pension in an amount which, if capitalized, equals the difference between such amount or the capitalized value of such compensation, or both, and the capitalized value of the pension which might otherwise have been payable under this Act, may be paid.

History

- (3) If any amount so recovered and collected, or any part thereof, is paid to His Majesty, a pension which, if capitalized, equals the amount so paid but is not in any event greater than the total pension which, apart from this section, would be payable under this Act, may be paid.

The annotation to these amendments read as follows: ³⁵

These are entirely new sections and have been drafted after taking opinion of the Department of Justice that the section in its present form is unworkable and may possibly be ultra vires. Under the present drafting the new sections will accomplish all that was intended to be accomplished under the old section, namely, that the country should not be compelled to pay full pension in respect of disability or death when damages or compensation are recoverable from other sources in respect of such injury or death.

These sections were renumbered Sections 20, 21, 22 in the Revised Statutes of Canada of 1952.³⁶ No basic change was made in their intent.

1952

The Standing Committee on Veterans Affairs reviewed the implications of Sections 20, 21, 22 and on Thursday, May 12, 1960, the Committee received copies of memoranda prepared by K.M. MacDonald, Legal Officer of the Canadian Pension Commission, dealing with these sections of the Act. These memoranda were published as appendices to the minutes of the proceedings of that date.³⁷

1960

Your Committee considers it pertinent to include, in this Report, two extracts from these appendices as follows:

If these sections were not in the Act the result would be that a serviceman who had suffered injury which, while incurred on service and pensionable under the insurance principle, was caused by the tortious act of a third person, would be placed in a preferred position to a serviceman who suffered a disability due to enemy action, this by reason of the fact that in the first case the man, in addition to being awarded pension for the full extent of his disability, could recover damages from the tortfeasor and retain such damages, whilst in the second case the only compensation such men could receive would be by way of pension. Similarly, the widow of a serviceman whose death occurred under such circumstances or the widow of a Classes 1 to 11 pensioner whose husband's death resulted from a tort or from an accident which involved payment of Workmen's Compensation would be placed in a preferred position.

History

To my mind it would seem to be established that this is a situation which Parliament desired to avoid.³⁸

At the Meeting of the Standing Committee on Veterans Affairs on May 5, 1960, a request was made to put on the record the number of cases in which Sections 20 and 22 had been involved in the last five years and the amounts which the Pension Commission had collected over this period.

Attached hereto please find a return which shows that 42 cases in which pension was awarded as a result of accidental injury or death were considered during the years 1956 to 1960 inclusive. Of these 42 cases damages were collected in 21 cases and such damages required to be taken into consideration in calculating the amount of pension that could be paid. In the other 21 cases no action was indicated on the part of the Commission by reason of the fact that no tort was involved.

The total amount of damages involved in the 21 cases in which adjustments were necessary was \$192,014.54.³⁹

The Standing Committee on Veterans Affairs discussed the application of Sections 20, 21 and 22, at a meeting on November 19th, 1963. Mr. T.D. Anderson, Commission Chairman, stated as follows:

First of all, the intent of this particular legislation is set forth in statements contained in the minutes of proceedings and evidence of the parliamentary committee of 1919, and I will quote that to you:

'A number of accidents of various descriptions have occurred and will continue to occur, in which the disability caused by the accident is pensionable and also entitles the soldier and sailor to damages or compensation from the person or company which was responsible for the accident. It is not reasonable that both pension and damages should be paid.'

This was the basis of the legislation. To enlarge on that slightly I would like to read this paragraph:

'If these sections were not in the Act, the result would be that the serviceman who had suffered injury which, while incurred on service and pensionable under the insurance principle, was caused by the tortious act of a third person, would be placed in a preferred position to a serviceman who suffered a disability due to enemy action. This by reason of the fact that in the first case the man, in addition to being awarded pension for the full extent of disability, could recover damages from the tortfeasor and retain such

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damages, whereas in the second case the only compensation the man could receive would be by way of pension. Similarly, the widow of a serviceman whose death occurred under such circumstances or the widow of a class 1 to 11 pensioner whose husband's death resulted from a tort or an accident which involved payment of workmen's compensation would be placed in a preferred position.'

The question before the committee and the people who drafted the legislation at the time was: should a man killed by an accident be given something to which a man killed in the trenches is not entitled? This is the basis of the legislation.

Your Committee considers it will be informative to include several excerpts from the minutes of this discussion. The first deals with a relationship between pension and life insurance and is as follows:⁴¹

Mr. J. McIntosh, M.P., Swift Current: Mr. Anderson made the statement that when this legislation was first brought into force it was considered unreasonable for damage settlement and pension both to be paid. In other words, you would put one of them in a preferred position. I was wondering what happens in the case of, for example, a man who is killed now or during the war and who obtains insurance. Are they not in a preferred position also? Does the pension commission request that the widow turn over the insurance to the pension commission?

Mr. Anderson: No, they do not.

Mr. McIntosh: Would it not then be logical to say that if the individual instituted a court action and received damages the same idea should prevail as with insurance?

Mr. Anderson: I am not saying that this is necessarily the correct thing to do. All I say is that this was the thinking behind the drafting and the introduction of this legislation into the Pension Act.

Another reference dealt with question of deleting these sections from the Act, as follows:⁴²

Mr. F. J. Bigg, M.P., Athabaska: I was going to say that if we are thinking about a preferred position, we are off the beam. Why not wipe this out and say that if a man is entitled to a pension he gets it. Instead of humming and hawing about it, why not make a clean slate of it now. If she gets a pension, she gets it, and the bookkeeping and legal work, and all of this, would be reduced to a minimum.....

History

Mr. Bigg: I understand that the theory behind pensions is to compensate a man on the average, shall we say. Suppose a musician went into the army and he lost his arms; he can no longer play the piano. The pension only will look after him as if he were a labourer; he could never get \$150,000 for the use of his hands from the government, but if he were smashed up in an accident he could collect. Are we going to put him in a lesser position than a citizen? I think we should put him right up level.

Mr. H. W. Herridge, M. P., Kootenay West: Mr. Anderson could you tell us what number of cases the Commission has handled during the last year which would come under this clause?

Mr. Anderson: I would not want to quote specific figures, but they are very few in number, perhaps no more than eight or ten in the course of a year, if that many. I might add that this is not a question of what the Canadian Pension Commission wants or does not want to do. It is what you gentlemen want to do in the legislation. Our hands are tied by the legislation.

Further, Mr. D.V. Pugh, M.P., Okanagan, spoke concerning the general application of these sections as follows:⁴³

Mr. Pugh: In stating the reasons given at the time of enacting these sections 20, 21 and 22, Mr. Anderson told us it was felt that if someone was injured, claimed damages and received them, he would be in a better position than the man overseas. I put forward the case of an ordinary civilian killed by a bomb, or in an ordinary accident in wartime who would just have an ordinary claim; if that same civilian was run over and killed, it could be that estate or his widow would receive \$20,000, \$30,000, \$40,000, or \$50,000. If we are considering this, one thing we should do is look at the general nature of the questions. You have specific and general damages. The general damages seem to cover everything in the nature of a punitive amount: in other words in the case of someone acting illegally or foolhardily who kills somebody. The damages which are received compensate those who are left.

What I am suggesting is that if we are thinking on that basis, we should look right into it and say "All right; the general damages which are paid compensate the widow and the children for the loss of the husband or father". Of course, along that line it would seem to me not good thinking to exclude the amount coming in which normally would go to those who are left. I mentioned that one specific case which was a case of hardship; but I only mentioned it in view of the fact that she did not get her legal fees out. Of course, they are capitalized in the pension and she will get it over a period of time. I think all these factors should be looked into based on the principle that there is a loss of a husband and possibly a father. Normally these damages would come to a civilian. The other point mentioned was about life insurance. If a man is in receipt of a pension, or if a widow gets a hangover from a pension, then surely if the on-

History

is good, the other should be good as well, and the government should not come along and say because you have a pension you should not have life insurance.

Mr. Anderson: There is one point I would like to clear up. Reverting to the question of legal fees, I would call your attention to the fact that the provisions in the act do give us authority to indemnify for costs if we think the widow has a good claim. If in our opinion it is a good claim, we can appoint a lawyer and indemnify for costs.

Mr. Pugh: Following along on that, in respect of this \$2,000 claim eventually was paid, the widow I believe said that the people in authority knew she was going to make this claim and advised her not to make it. She went ahead and made it and the money was then turned over to the government. I think this is wrong. In that case you were thinking of the costs if she lost the case.

Mr. Anderson: Either way.

Mr. Pugh: If she lost the case, it would not make any difference; she would have to assume that herself.

Mr. Anderson: Not if we agreed to indemnify.

Mr. Pugh: I would say that the injured parties do not realize they are going to lose this to the government even if they win.

Mr. Anderson: Of course they are not necessarily going to lose it all; they may, but not necessarily.

Mr. Pugh: Suppose she received \$1,500 and the costs were \$1,500. The government would have kept the \$1,500 and handed nothing back to her to pay for this, she having paid \$1,500 out of her own pocket.

Mr. Anderson: That is true, unless we had agreed to indemnify for the costs to begin with.

COMMITTEE RECOMMENDATIONS

(90) That the Act be amended to replace the existing Sections 20, 21 and 22 with a new section which would provide that the Act contain only a provision to prohibit a person from receiving both an award of pension under the Pension Act and an award under the Government Employees Compensation Act or similar legislation of the Federal Government designed to compensate for death or disability where such is attributable to employment in the Government service or has been caused under circumstances which in some manner indicate liability upon the Crown.

Sections 20,21
22 Be Replaced
By a Limitation
That Only One
Pension be Paid
By the Federal
Government

(91) That provision be made, under special legislation, for the Pension Commission to review all cases where, by reason of action taken under Sections 20 or 21, an amount of legal damages has been paid into the Crown or alternatively pension has been reduced; and that

Special
Legislation
Be Enacted
To Refund
Damages on
Pension

- (a) The total of any such amounts recovered by the Crown be refunded, without interest, to the pensioner or widow respectively, who was the intended recipient of the award. Should such recipient be deceased, no refund should be made, and the heirs should have no rights of recovery.
- (b) The amounts represented by a reduction in pension should be refunded to a pensioner or a widow, retroactively for a period of five years from the date of such legislation with the stipulation that this refund should include the total amount to which the pensioner or widow would have been entitled at the rates of pension in payment at that time, including additional pension for a dependant or dependants if applicable.

COMMENTGENERAL

Basis of Pension: Your Committee notes that, at present, the payment of pensions for death or disability under the Pension Act is based principally on the loss of earning capacity. This requires that the physical or mental impairment in the pensioner be measured against the economic loss of a man in the class of untrained labourer. The full explanation of your Committee's view in regard to necessity of retaining this concept will be found in the Chapter dealing with basic rate of pension.

It is significant also that pension is paid partly in the form of a contractual obligation and partly in payment of a debt. This was explained in a document entitled "Canadian Pensions and Proposed Bill with Remarks, 1917", part of which reads as follows:*

The relationship between the soldier and his Country is partly, if not wholly, contractual. The consideration given by the soldier is service; the consideration given by the Country is pay, allowance and pension. The Country owes the soldier a debt under an implied contract... The same arguments might be used in favour of the widow and the children of a member of the forces when he dies or is killed. Reparation for his death must be paid to them, not because the Country is grateful to the soldier or to them, but because the soldier by having given service to his Country, has earned the payment of a debt to his widow and his children.....

Your Committee takes the view that pension is a matter of right.

There is no specific provision in the Act in this regard, except that the Act makes a distinction between entitlement claims in the procedural sections and discretionary benefits such as dependent parents pension, compassionate pension and burial grants.

* See page 487, Chapter 13, dealing with Basic Rate, hereof.

Comment

Right of Widow: A pension payable to a widow stems from the member's right to pension. If his death occurred while he was in the service, the widow may have entitlement under Section 13(1) or 13(2) to a pension which is based on a percentage (approximately 75%) of the pension he would have received, had he been totally disabled. If the member dies after his release from the service, the widow is entitled to pension under Section 36(3) if the death is attributable to service, or if pension was being paid at the rate of 48% or greater, or if he dies on the strength of the Department for treatment and pension would have been paid at such rate except for his death.*

Section 20 provides that, where a death or disability for which pension is payable is caused under circumstances creating a liability upon some other party, there is a right in the Crown to withhold a portion of pension under certain circumstances.

Your Committee questions the propriety of permitting any diminution of widow's pension, by reason of her receiving an award of legal damages or Workmen's Compensation. The right of the widow to receive full pension, should her husband die under circumstances which entitles her to that pension, should transcend all **other** considerations.

Basis - Legal Damages Award: It is impossible to define with any accuracy all of the factors that are taken into account by a court in an award of legal damages. There are, however, three aspects which can be examined in conjunction with these provisions of the Pension Act. They are:

* See Recommendations - Pension for Widow on Death of Pensioner. (Volume III, Chapter 25)

Comment(1) Loss of ability to earn a livelihood:

It is the practice of courts to assess this loss on a subjective basis. That is to say, the amount which a court may award will depend, at least in part, on the earning capacity of the individual involved. This assessment is not an absolute one. For example, a court will make reference to the mortality tables which, of course, represent an objective measurement which is applied to specific age groups of all Canadians. These tables are a guide only, and it is usually required that the court apply any special factors of a subjective nature, as they would relate to the question of the expected life span or other considerations involving the loss of earning ability.

(2) Pain and suffering:

This is a very real factor, but is, nonetheless, of a nebulous character. It is impossible to point to any acceptable standard of assessment for pain and suffering and this necessarily varies between judge and judge, jury and jury, and plaintiff and plaintiff. In illustration of the difficulty of accurate measurement in this regard, sympathy cannot be ruled out, even though it is not considered as an actual part of the basis of an award for pain and suffering.

(3) Punitive damages:

These are awarded to a plaintiff under certain circumstances, where a court considers that a negligent party is liable for payment of money by reason of the peculiar nature of a wrong-doing or other circumstances involved in the accident.

Comment(4) Special damages:

These are out of pocket expenses, and it is the practice of at least some courts to make awards for them separately. Such awards are not part of compensation for future circumstances, as they can be considered in a sense as encumbered in that they are made as recompense for specific costs.

Widow of a pensioner

The examples cited hereunder are hypothetical cases under which the propriety of this provision can be examined:

(1) Where a 50% pensioner is injured, and such injury results in an additional disability assessed at 30%, the 50% pension already in payment would not be affected by the rights or liabilities arising from the additional disability assessed at 30%. It is vested.

(2) Where death occurs of a 50% pensioner, and an additional recovery is made arising out of the cause of that death, the original 50% pension should not be affected by the rights or liabilities arising from the payment of the additional recovery. It is vested also, as are the rights that flow from it, namely full widow's pension.

Notwithstanding, as the Act reads at present - and as it is apparently interpreted by the Pension Commission - the Crown is empowered to attach the rights of the widow to pension which is paid because of the death. The widow's right to pension stems from the 50% pension of the pensioner. These rights should not be saddled with the incidents pertaining to the cause of death. Death under any circumstance should entitle her to widow's pension, in the view of your Committee.

Comments:

In some instances the widow's pension would be substantially less than that being paid to the veteran prior to his death. For example a married pensioner in receipt of pension at the rate of 100%, in accordance with rates in effect at this date, would receive a total pension, at married rates, of \$3,528. If the widow were awarded widow's pension following his death, the payment, at current rates, would be \$2,100. per annum. It is true that if a married pensioner was in receipt of pension of 50% he would receive, at married rates, an annual pension of \$1,764. This, compared with pension for his widow at \$2,100. would mean that, upon his death, the liability against the Crown would be greater. Your Committee feels that, regardless of the amount which would be paid by the Government to a widow, she should not be forced, or even asked, to make any election with regard to a widow's pension.

The basic consideration is that, on the death of the veteran, the widow's pension is substituted for the veteran's pension. It is not properly attributable to the cause of death in this instance, any more than it would be in the case of a death where there was no legal liability.

Compassionate Considerations: Your Committee considers it necessary, in respect of Section 20 of the Act, to ask whether it is reasonable to force a widow, within a few weeks following the death of her husband, to institute legal proceedings against a third party. A lawsuit can be a harrowing and bitter experience. Very often she would have to relive the circumstances of her husband's death. Should the widow wish to proceed in this matter of her own volition there could, of course, be no objection. The iniquity in this situation arises from the fact that the widow is compelled, under the Act, to institute these proceedings with no prospect of financial gain to herself in that, if the proceedings are successful, the amount recovered is either paid to the Crown, or alternatively, the pension is reduced accordingly.

Comment

Your Committee noted an example ⁴⁴ in which a pensioner in receipt of pension of 50% was killed on November 29, 1963. On December 12, 1963 the report from a representative of the Department of Veterans Affairs indicates that the widow was visited, and that her attention was drawn to Sections 20 and 21 of the Pension Act. The report states:

However, she was too emotionally disturbed to understand the intent of it .

On January 7, 1964, the situation with respect to Sections 20, 21 and 22 of the Pension Act were explained to the widow in a letter from the Pension Commission and a declaration was received from her to the effect that she understood the situation and desired to receive widow's pension. The file shows that on May 9, 1966, the Commission again wrote to the widow, pointing out that "these monies are not to be considered as pension at this time, but rather advances in accordance with your request of January 11, 1964".

The letter went on to state that a condition precedent to payment of pension was that she would be required to take reasonable steps to enforce any liability arising out of the accidental death of her husband. The widow contacted the Commission's representative, stating that the suggestion was not acceptable to her. The Commission then contacted the widow's solicitor who had been advised that a settlement would be made on behalf of the carrier in whose vehicle the accident occurred, if the widow so requested. The widow advised the Commission in a letter dated November 27th, 1966, to the effect that she wished to continue to receive pension rather than to accept any settlement by way of legal damages and that her reasons were other than financial.⁴⁵

Comment

Comparison with Court Settlements: It is necessary to consider also that any amounts recovered by reason of a damage award through the courts are final and definite. The widow would have her day in court. The damages are hers and are not subject to reduction or cancellation due to any change in circumstances such as a future marriage. Your Committee deplores the fact, however, that under the existing legislation, a widow may be placed in the position, shortly after the death of her husband, of having to assess her future matrimonial prospects. The requirement to make this decision arises from the fact that, if she does remarry, her pension would cease. Therefore, she would perhaps be in a better position financially if she were to elect to accept a settlement of legal damages, because on her remarriage she would lose her pension anyway. If, on the other hand, she decides not to remarry the acceptance of such legal damages would deprive her of widow's pension.

Means Test: The payment of pension under the Pension Act, in most other circumstances, takes no account of the financial means of the recipient.* Your Committee considers that this principle should be inviolate in almost all areas of the administration of this Act. It will be observed, notwithstanding, that where Sections 20 and 21 provide for the recovery by the Crown of allowance payable from other sources, such represents in effect, the application of a means test. In other words, the Government is saying that if the widow, by reason of any such death, is in a position to receive additional monies from some other source, the Government will reduce the pension accordingly, or, if the pension is to be paid, the Government will insist that the amounts receivable from other sources be paid to the Crown. The fallacy of this principle is apparent when the question of payment of life insurance is

* Exceptions include pension for dependent parents, brothers, sisters and widows under some circumstances; pension for improper conduct.

Comment

considered. For example, where the death of the pensioner results in the payment of life insurance to a widow, the Government makes no attempt to attach such payment or to reduce pension accordingly. It should follow then that a payment which is due a widow by reason of legal damages or compensation from other source should not be taken into account by the Crown, and any such action is applying a type of means test to the payment of widow's pension.

The application of these Sections of the Act to the circumstances of a widow has, in the view of your Committee, resulted in inconsiderate treatment of the widows of servicemen and pensioners for many years. The amendment to the Pension Act in 1939, under which the widows of pensioners in receipt of pension between 48% and 78% became eligible under Section 36(3), (formerly only widows of pensioners in receipt of pension of 78% or higher qualified) had the result of increasing the number of widows affected by this Sections 20 and 21 of the Act. Your Committee has recommended* that widows of pensioners below 48% should receive a pro-rata share of widows pension. Should this recommendation be accepted, there would be even more requirement to bring about an amendment to remove Sections 20, 21 and 22 from the Act.

It cannot be overstressed that the pension payable to a widow following the death of a pensioner is a continuation of a right which vested in her prior to his death. It is, in the opinion of your Committee, difficult to support legislation which can have the effect of reducing these rights because of the fact that another benefit may accrue to her on the death.

* See Recommendations, Volume III, Chapter 25, dealing with widow's pension.

CommentWidow of Regular Force Member

It is necessary to examine the situation with regard to the payment of a pension to a widow under Section 13(2) where the death of a member of the peacetime forces is related to service. This raises some different considerations to those which apply to the widow of a pensioner, as dealt with above.

An award of damages is based on the loss of earnings, pain and suffering, special damages, and in some instances, punitive damages. These are lumped together and cannot be divided with any degree of accuracy. With the subjective standards used by a court, and the objective standards used by the Pension Commission, it seems to your Committee that the essential difference in the basis between an award of damages by a court and an award of pension under the Pension Act makes it impossible to properly equate them.

The present yardstick or method used by the Pension Commission in Sections 20 and 21 is measured in terms of dollars alone. This means, of course, that this pension is directly related to the loss of the earning capacity as represented by her husband, such earning capacity being calculated in terms of the unskilled labour market. The Crown, in insisting that an award of damages be recovered from pension or that the pension be reduced accordingly, is prepared to deprive a widow of the pension awarded as a right which flows from her late husband's service. This is insupportable because the amounts awarded by a court are under a completely different standard from that on which pension is awarded under the Act.

Comment

The effect of this can be, and often is, to place the widow in the same position, with considerable additional worry, as that which would exist if her husband had never served. Carried to an extreme, the result is that if someone else can be forced to provide sufficient financial emolument to the widow, the Government would have to do nothing for her at all, despite the fact that her husband's death was related to service.

The purpose of Section 13(2) of the Pension Act is to pay pension where a death is related to service. The present attitude of the Pension Commission, in interpreting the Act, seems to be that benefits cannot be received from two sources. That is to say, she is not entitled to pension from the Government, and to award of damages from some other source by reason of the death of her husband.

This is a restriction on the rights given by Section 13(2) - a restriction that does not operate in other areas. For example, if the deceased serviceman had a policy of life insurance (as illustrated earlier on page 745), the Commission would not be concerned with the proceeds. This is because the life insurance is payable for the fact of death - not the cause. The same is true of pension. It is payable if the death is related to service - not by reason of the cause of death. In other words, the present interpretation of the legislation in large measure equates the liability of the Government, in the case of death by accident where there is legal liability, with the provisions of an accident policy which contains the right of subrogation.

In determining the amount to which a widow's pension may be liable to be debited, the capitalized value is taken. This is based on her age and life expectancy. There is, however, no assurance that only the incidence of mortality will affect the amount she may receive. For example, her pension will terminate if she remarries. When put to her election, no allowance is made for this.

Comment

Yet it stands as a potential benefit to the public purse. In making her election, in many instances, this may well be a fact that she will have to take into account at a time when she is least likely to be qualified to do so; that is immediately following the death of her husband.

The present interpretation of this Section relegates some of the rights given by Section 13(2) to the realm of commercial insurance. In your Committee's view this is not justifiable, particularly when the fact is recognized that the serviceman has little choice as to the nature of the risks he must assume in carrying out the requirements of his service.

Attention is directed to the case cited on page 719 hereof. In this case the member lost his life in a civilian airplane accident while returning from overseas duty. He had been absent from his wife and children for more than a year. He had no choice as to his location, type of transportation or the other circumstances which led to his death. It is perhaps of indirect interest only that he had given long service to the Canadian Army in times of both peace and war, and had been decorated for gallantry. Yet, when the time came to decide the question of indemnification to his widow in regard to his death the case resolved down to little more than an argument between two insurers. The Government had an additional responsibility to pay pension under Section 13(2) of the Act as he was on duty at the time of his death. The Pension Commission, acting under the requirements of Section 20 of the Act, insisted that this liability should be transferred, at least in part, to the carrier in whose vehicle the death occurred, and in turn should be accepted by the insurer for that carrier, by reason of the fact that that carrier had caused the death and the insurer for the carrier should have to meet the requirement to compensate the widow for the loss of earning power as represented in her husband's capabilities.

Comments

Your Committee considers that widow's pension is not inordinately large, and in the case in point the legislation should not have been such as to force the Pension Commission to reduce the pension by the amount recovered by way of damages arising from her husband's death, bearing in mind that it arose out of and was directly connected with service. If the carrier, through his insurer, was prepared to accept additional liability and make a further payment to the widow, she should have been entitled to accept same without any reduction in her payment.

This is particularly applicable in the case in question, because her husband, holding the rank of major, was earning an income of \$608. per month at the time of his death. The maximum pension at that time for the widow was \$100.00 per month. Her pension was subsequently reduced to \$76.10 by reason of the settlement which the widow accepted from the carrier's insurer.

Application of Sections 20 and 21 in Cases of Disability

As in the case of death, the Act provides that where a disability has been incurred which may result in payment of pension under the Act, and the circumstances are such that another party may be liable to pay damages or compensation, the Commission shall take action either to recover the monies involved, or reduce the pension accordingly.

Much that has been said in regard to the case of a widow, has application in the circumstances of a disability pensioner who suffers further injury or of a service man who is injured. The main points are enumerated below:

- (1) Basis of pension: Pension is paid as a matter of right to compensate for a disability, the extent of which is measured in terms of disqualification in the unskilled labour market. The right to this pension under the legislation should remain inviolate.

Comment

- (2) The nature of damages: Damages are paid specifically to compensate for the loss of ability to earn a livelihood, and in addition to indemnify disabled persons for pain and suffering. Special damages include the incidental costs of the accident to the injured. Punitive damages are paid by reason of the fact that the negligent party is held by a court to be liable for payment of monies arising from the peculiar nature of a wrong-doing or the circumstance involved in the accident.
- (3) Means test: The action of the Crown in attempting to recover monies awarded as legal damages really results in the application of a means test, in that full pension will not be paid where the payment of such monies will be directed to the disabled person.
- (4) Comparison with Court settlements: A Court settlement is made on the basis of the facts surrounding the accident. It takes into account not only the special reasons for payment of damages, but other subjective matters such as the occupation of the plaintiff, his expected life span, etc. On the other hand the payment of pension is based purely on objective standards, measuring the disabled against his ability to earn money in the unskilled labour market.

Disability Pensioner who Experiences Consequential Disability

Sections 20 and 21 of the Pension Act have application where a pensioner has experienced a second disability which is consequential upon an original disability for which pension is in payment. The example, cited in the annotations to the Pension Act in 1919, follows:

Comment

A one-legged pensioner is employed in a factory. Owing to his disability he falls in a machine and loses a hand. Seeing that the loss of the hand is due to the disability for which he is pensioned, he is also pensionable for the second disability.

Under the Pension Act, the Commission shall recover any amounts awarded as a damage settlement, or any amount approved under Workmen's Compensation or a similar legislation, or alternatively shall reduce the amount of pension to be paid for the second disability.

It is presumed that the reason for this provision in the Act is based on the principle that the accident itself creates a liability on the Crown to pay additional pension, and that such liability should not be accepted by the Crown, if a third party is in a position to assume part or all of it.

Your Committee considers that here, as in the case of the widow of a pensioner, it is not entirely correct to say that the additional obligation on the Crown to pay pension stems from the cause of the consequential disability. The causal factor in the consequential disability is surely the original disability. The example given in the annotation to the original Pension Act uses the words "owing to the disability he falls into a machine and loses a hand". This places the cause of the loss of the hand squarely on the fact that he has lost a leg and presumably such loss was responsible, for his fall into the machinery which resulted in his second disability, i.e., the loss of a hand.

In view of this, your Committee cannot accept the fact that the Crown should, under the Act, shift the responsibility for this liability to any third party, be it an individual, commercial insurer or Workmen's Compensation Board. Furthermore, the pensioner is entitled to the additional pension whether any third party is involved or not. The fact that someone else was negligent is not pertinent to the obligation of the Crown, any more than is the fact that the pensioner may have carried a personal policy of accident insurance which would indemnify him for this loss, separate and apart from any pension to be paid therefor.

Comment

The same considerations apply whether it is an award for damages or an award under Workmen's Compensation. It may well be that an award of Workmen's Compensation may be affected by the previous condition if, for example, the authority responsible for the compensation award refuses or reduces that compensation by reason of the fact that the pensioner had a medical disability which existed prior to the second accident. Your Committee considers that any such matters are extraneous to the liability to the Crown to pay pension as of right, stemming as it does in this case, from the original disability.

Also, if the question of the cause of the accident is to be taken into account, this is presumably a responsibility of the Court in a damage case -- or of the Workmen's Compensation Board in an industrial accident. The Court or Compensation Board may decide against damages or compensation as the case may be, but this must not be a consideration in regard to an award arising out of a consequential disability under the Pension Act. It should be the responsibility of the Pension Commission to pay pension in cases of this nature, and leave other matters to be decided by jurisdiction outside of the Commission.

Disability experienced by a member of the Regular Forces

Under the existing Section 20 of the Pension Act, a question of controversy arises where a member of the Regular Forces experiences a disability which is related to the service, and where the circumstances of his injury indicate the possibility of a claim for legal damages against the third party. A hypothetical case would be that of a member of the Forces who sustains serious injury while operating a service vehicle.

Comment

The Pension Commission may approve a pension on the grounds that the injury was related to service. At the same time, the soldier succeeds in establishing a claim for legal damages against a negligent third party who caused the accident.

The main point, in the view of your Committee, is that a serviceman who is awarded pension under the Pension Act because of an accident which is held to have been related to service has a vested right in that pension and the payment under the Act should be his, regardless of any third party liability. The responsibility of the Crown to make this payment arises out of the fact of injury, not the cause. That is to say, once the decision is made that this injury was in some way attributable to the conditions of military service, the right to that pension has been established.

If, upon examination, it is decided either within the Commission or by jurisdiction outside of the Commission that the cause is one which results in the payment of legal damages, your Committee considers that the injured serviceman is entitled to these damages.

The only interest of the Crown in such matter should be where there is a claim against a third party, by reason of any expense to the Crown for medical attention for the injured serviceman or loss to the Crown by reason of the fact that his pay and allowances have been continued during a time when he was unable to perform his duties because of the injury.

In this respect your Committee studied the National Defence Claims Order of 1952, which provides that, where the Crown has a legal claim against a person by reason of loss or damage suffered by the Crown, action may be taken to recover the amount involved from the person liable. The effect of this order is that the Crown has means of recovering its own loss, and your Committee considers that, should the injured serviceman have what might be termed a personal claim, he should be entitled to recovery of any amount involved without having to suffer compensating reduction in his pension.

Comment

In illustration, your Committee cites two hypothetical cases, both in which a serviceman suffers the same type of injury, and both under circumstances where it can be ruled that the injury was related to service. The difference between the cases is that in the first, a third party is liable for payment of damages, whereas this circumstance does not obtain in the second case. Your Committee cannot see that question of the liability of a third party should in any way affect the rights of either serviceman to pension under the Act.

Amount of Pension: The maximum pension award for total disability of a pensioner without dependants under existing rates is \$2,760 per annum. The pay and allowances of a single private soldier, three years in rank is between \$4,200 and \$4,480. The maximum pension of \$2,760 is the most that he could receive under the Pension Act. This establishes the point that, in the circumstance where a member of the peacetime forces is totally and permanently disabled due to a service-caused injury, he would be paid a pension which is only two-thirds of the amount he was earning in the Armed Forces. Hence, he would sustain a drop in earnings (assuming that he was totally disabled and unable to accept alternative employment) of approximately \$1,720 per annum. In view of this deficiency, it seems that he should be entitled to keep for his own use any additional funds which may come his way by reason of legal damages arising out of the accident or injury.

Morale Factor: Your Committee received representations as to the possible effect on the morale of the personnel of the Armed Forces which could arise from the Crown attaching legal damages awarded to an injured serviceman or alternatively reducing his pension by the amount involved.

Comment

In the example given above where the serviceman suffered serious injury, he faces the termination of a career if the disability is severe enough to cause his release from the service. His pension, if assessed at 100%, would still be considerably below his potential earnings in the Armed Forces. A case of this nature would attract interest within the Armed Forces when it became known that the Government, under the provisions of Section 20 of the Act, recovered the monies involved or reduced the pension accordingly. The result could be that confidence within the Armed Forces in regard to the coverage of this Pension Act would be affected.

Your Committee considers that the requirements of service in the peacetime forces today are such that its members should be given every encouragement in regard to the liability of the Government, should a member suffer severe injury. These requirements are spelled out in detail in the section of the Report which deals with the Regular Force; there is no need to repeat them here. It is sufficient to say that the serviceman, under existing conditions of world tension, is subject to many potential hazards arising out of the call of duty. In addition, the mechanization of the forces and the requirement for mobility, coupled with incessant postings, has brought about an ever increasing need for protection of his income in the event of serious disablement.

Your Committee has recommended that damages or compensation payable to a pensioner as a result of an injury which is also pensionable under the Pension Act should be retained by the pensioner. For reasons, some of which are the same and some of which are different, your Committee considers that the serviceman serving in peacetime is entitled to the same consideration as the pensioned veteran. He is performing a useful and often dangerous service for his Country, and is entitled to maximum consideration in such matters.

CommentGeneral Considerations

In conclusion, your Committee submits two further reasons for the deletion of these sections from the Act. Firstly, it is doubtful if the amount of money involved on the part of the Crown is sufficient to justify the administrative time and effort required to deal with the recovery or adjustment of pension under sections 20 and 21 of the Act.

The following information was provided in a letter to your Committee from the Chairman of the Pension Commission under date of August 2nd, 1966:

A search of the records with the Commission reveals that for the period from 1944 to January, 1957, 513 cases were reviewed in which Section 20 appeared to be involved. Of these, the Commission decided that no action was indicated in 331 cases. In the remaining 182 cases action had either been commenced by the solicitors for the pensioner, or the Commission had directed that action be taken and indemnified for costs. As a result of these actions, damages totalling \$710,229.39 were taken into consideration in adjusting pensions. In addition, the sum of \$3,000 recovered in 1946 on behalf of an orphan child required to be taken into consideration. 38 cases in which Workmen's Compensation became payable were considered under the provisions of Section 21.

The amount involved in 182 cases, as reported by the Chairman of the Pension Commission over the period 1944 to 1957, averaged \$54,600 per year. During the same period the number of cases in which Workmen's Compensation became payable, thus requiring consideration under Section 21 of the Act, was 38. The amounts involved could not be readily ascertained, but the average per case would be less than the average amount taken into consideration as the result of legal damages. Hence the total amount in the 13 years covered in the report from the Commission could be regarded as negligible, having regard for the total pension expenditure.

Comment

Secondly, your Committee is of the view that, on general principle, the provisions of Sections 20 and 21 have no place in the Pension Act. This Act confers certain rights upon members of the forces and their dependants, based on the obligation of the Government to provide compensation for disability or death. It is difficult to justify alienation of these rights by reason of the fact that the disability or death may also be compensable from some other source. The responsibility to award legal damages is that of the courts, the awards usually being based on such factors as earning potential and life expectancy. Workmen's Compensation is awarded by Provincial Boards. A court or Compensation Board might well decide to take into consideration any award being made under the Pension Act, and might have the right to do so. Your Committee considers, however, that receipt of a pension should not be contingent upon other sources of income.

Actions against the Crown

Your Committee was interested to note that the Pension Act provides that no action or other proceeding shall lie against the Crown in respect of any injury, disease or aggravation thereof resulting in disability or death in any case where a pension was awarded or awardable under the Pension Act. Section 76 of the Act, which prohibits litigation against the Crown for additional damages in any instance where a pension is awarded, reads as follows:

76. No action or other proceeding lies against Her Majesty or against any officer, servant or agent of Her Majesty in respect of any injury or disease or aggravation thereof resulting in disability or death in any case where a pension is awarded or awardable by the Commission under or by virtue of this or any other Act in respect of such disability or death.

Comment

The annotation explaining this section of the Act read as follows:⁴⁷

This is a new section. The purpose of this amendment is to ensure that an applicant whose claim is based on accidental injury or death due to negligence of a servant of the Crown shall not be placed in any better position than an applicant whose claim is based on disability or death due to enemy action.

This amendment to the Pension Act followed a specific case in which R-224258 LAC. George Walsh Oakes, a member of the Royal Canadian Air Force, was killed on June 5th, 1945, while riding as a passenger in an RCAF truck which was struck by a Canadian National Railways train. A member of the RCAF who was driving the vehicle was held responsible for the accident.⁴⁸

On August 17th, 1945, the Pension Commission awarded pension to the widow and two infant children, effective from the date following her husband's death.

By judgement dated May 17th, 1951, the Exchequer Court of Canada awarded the widow and children damages in the amount of \$30,000., proportioned \$18,000. to the widow and \$6,000. each to the two children.

On October 12th, 1951, the Pension Commission, having been informed that Mrs. Oakes collected said judgement, noted that the amount so recovered was greater than the capitalized value of the pension awarded and therefore authorized the cancellation of the pension from the commencement thereof and directed that the pension already paid in the amount of \$7,470.63 be recovered. Mrs. Oakes obtained a further judgement from the Exchequer Court to the effect that she was entitled to the pension payments of \$7,470, notwithstanding the damages of \$22,000 received from the Exchequer Court.

A Canadian Press report of August 12th, 1954 concerning the judgement entitling Mrs. Oakes to pension payments of \$7,470. follows:

Comments

MONTREAL, August 12 - (CP) -

Chief Justice J. P. Thorson ruled today that Mrs. Elizabeth Cornell Oakes is entitled to the full pension of \$7,470 awarded her for the wartime death of her husband despite \$30,000 damages she received from the Exchequer Court of Canada.

The Court decision is the last of its kind possible in Canada because of a 1953 pension law amendment stating that no person may receive both a pension through the Canadian Pension Commission and damages from a court.

Mrs. Oakes' husband, G. Walsh Oakes, member of the RCAF was killed in Montreal's East-End while riding in a military vehicle. An RCAF employee, driver of the vehicle was held responsible for the accident.

Your Committee assumes that the action to place Section 76 in the Act was taken as a direct result of the suit launched by Mrs. Oakes against the Crown.

It would seem that Section 76 of the Pension Act provides sufficient protection that a beneficiary under the Act could not gain benefit by reason of a damage action against the Crown. Hence, the provisions of Section 20 are not required in this respect. Also, in order to protect further the interests of the Crown your Committee has recommended replacement of these sections by a section which would prohibit payment of pension or indemnity for death or disability attributable to employment in the government service under other legislation of the Federal Government. This would, of course, not affect sums receivable under superannuation legislation.

Consequential Disabilities

Your Committee examined the case ⁴⁹ reported on page 701 hereof. The problem in this particular case arose by reason of the fact that the Commission approved pension for a consequential disability, and subsequently reduced this pension in the amount awarded by the Workmen's Compensation Board.

Comment

Your Committee has recommended, in connection with consequential disabilities, that a pension should be awarded even if there is an area of prohibition involved. That is to say, the pension should be awarded if a pensioner suffers a disability which is considered as consequential upon his pensionable disability. Your Committee does not consider that additional pension should be denied on the grounds that a pensioner was not exercising proper care or precautions, having regard for the pensionable condition.

Your Committee's view of this is that a person in receipt of pension for a low back condition should be encouraged to undertake employment. If further injury does occur, there would be a basis for an award, consequential upon the pension condition. This premise is explained in Chapter 16 which deals with consequential disabilities. In addition, the pensioner should be entitled to any compensation which could be awarded by another jurisdiction, whose responsibility is to determine compensation rights.

Retroactivation

Your Committee has deemed it necessary to recommend that the effect of the removal of Sections 20, 21 22 from the Pension Act should not be retroactive. Notwithstanding, there are cases in which recovery has been made or pension has been reduced accordingly, wherein the principles as expressed by the Committee in this section of this Report would apply, and where a pensioner or a widow should be reimbursed for any loss sustained by reason of the application of these sections of the Act.

Comment

Your Committee considers that there is a responsibility on the Government to make such refund as may be practicable in respect of amounts which have been recovered by the Crown or have been deducted by pension by reason of these sections of the Act. The original intent, as interpreted by Mr. T. D. Anderson, Pension Commission Chairman, in his evidence before the 1963 Parliamentary Committee, was to the effect that a widow who lost her husband in a civilian accident, wherein there was possibility of an award of legal damages by a third party, should not be placed in a preferred position to that of a widow whose husband was killed in action.

In the view of your Committee, this intent cannot be supported. The widow whose husband was killed in action is entitled to compensation under the Pension Act. The widow whose husband was killed in a civilian accident is entitled to the same compensation if the death is related to service, under the same implied contract. If, because of the circumstances of his death, she is entitled also to recompense from a third party there is no connection or relationship between the responsibility of that third party and the implied contract under the Pension Act.

Your Committee suggests that these provisions have never been consistent with the intent and purpose of the Pension Act. It is recommended, therefore, that not only should they be removed but that in so far as is possible, the Government should make amends by refunding amounts previously recovered or by paying the amount of pension withheld up to a maximum retro-active period of five years, provided that the parties to whom the damages or pension were due are still alive.

AWARDS OF LEGAL DAMAGES
OR WORKMEN'S COMPENSATION

REFERENCES

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2. Letter from Deputy Chairman Canadian Pension Commission dated December 30th, 1966 on Committee Case File No. 5.
3. Minutes of Proceedings, Parliamentary Committee on Veterans Affairs, 1961, Page 229.
4. Minutes, Special General Meeting, Canadian Pension Commission, November 14th, 1963.
5. Minutes, General Meeting, Canadian Pension Commission, December 20th, 1951.
6. Proceedings of Committee Sessions, Volume I, Page F-42.
7. Ibid, Volume I, Page B-28.
8. Ibid, Volume I, Page B-29.
9. Ibid, Volume II, Page I-29.
10. Ibid, Volume II, Page I-31.
11. Ibid, Volume II, Page J-8.
12. Ibid, Volume II, Page J-9.
13. Ibid, Volume II, Page J-10.
14. Ibid, Volume II, Page K-18.
15. Ibid, Volume II, Page K-19.
16. Ibid, Volume III, Page L-116.
17. Ibid, Volume III, Page L-117.
18. Ibid, Volume III, Page L-118.
19. Ibid, Volume III, Page L-120.
20. Ibid, Volume IV, Page M-26.
21. Ibid, Volume IV, Page N-37.
22. Ibid, Volume IV, Page N-39.
23. Ibid, Volume IV, Page Q-6.
24. Ibid, Volume IV, Page Q-6.
25. Ibid, Volume V, Page S-15.
26. Ibid, Volume V, Page S-16.
27. Ibid, Volume V, Page T-9.
28. Ibid, Volume VII, Page NN-51.
29. SC. 1919, C.43, s.18, assented to July 7th, 1919.
30. Pension Act with Annotations, July 1919.
31. RSC 1927, C. 157, s.18.
32. Canadian Pension Commission Subject File on Sections 20, 21 and 22.
33. Ibid.
34. SC. 1941, C.23, s.10 assented to June 14th, 1961.
35. Bill 17 as passed by the House of Commons, May 28th, 1941, Page 7.
36. RSC 1952, C.207.
37. Minutes of Proceedings, Standing Committee on Veterans Affairs 1960, Page 225.
38. Ibid, Page 230.
39. Ibid, Page 231.
40. Minutes of Proceedings, Standing Committee on Veterans Affairs 1963, Page 182.
41. Ibid, Page 183.
42. Ibid, Page 183.
43. Ibid, Pages 185-186.
44. Committee Case File No. 6.
45. Committee Case File No. 6.
46. Pension Act with Annotations, July 1st, 1919.
47. Bill 184, as passed by the House of Commons, June 23rd, 1952, Page 2.
48. See findings of Court of Enquiry of June 6th, 1945, on D.V.A. veterans file R-224258, OAKES, George Walsh.
49. Committee Case File No. 5.

HONG KONG VETERANSGENERAL

Section 28, sub-section (1) and (2) of the Pension Act provides authority for the assessment of the extent of a disability, as follows:¹

- 28(1) Subject to the provisions of section 13, pensions for disabilities shall, except as provided in sub-section (3), be awarded ~~or~~ continued in accordance with the extent of the disability resulting from injury or disease or aggravation thereof as the case may be, of the applicant or pensioner.
- 28(2) The estimate of the extent of a disability shall be based on the Instructions and a Table of Disabilities to be made by the Commission for the guidance of physicians and surgeons making medical examinations for pension purposes.

Your Committee noted that, following release of a report entitled "Study of the Disabilities and Problems of Hong Kong Veterans 1964-1965", by Dr. H.J. Richardson, Medical Adviser, Canadian Pension Commission, you made a public statement on December 22nd, 1965, which read: ²

Following a two-year study, directed by Dr. H.J. Richardson of the Canadian Pension Commission, on the problems of Canada's Hong Kong veterans, a preliminary report has been submitted containing several important recommendations concerning treatment and pension status for these veterans, the Honourable Roger Teillet, Minister of Veterans Affairs, announced today.

The study included a survey of 100 of these veterans and an equal number of their brothers who had war-time service but who were not prisoners of war. This survey began in 1964 and the 200 veterans were examined in DVA clinics and hospitals across the country.

"The recommendations arising out of the study, most of which fall within the existing authority of the Commission, are being studied and I hope decisions concerning them will be announced early in the new year," the Minister said.

The survey showed that the Hong Kong veterans had more social and economic problems and difficulties than their brothers. They had significantly more medical disabilities, including gastro-intestinal, neurological and psychological problems, and inferior dental health.

Among the Hong Kong veterans as a whole there had been significantly more deaths from coronary artery disease than would have been expected among Canadian men of the same age group.

General

Concerning the implementation of the report you reported to the House of Commons under date of March 21st, 1966, as follows: ³

The Commission plans to proceed with a review, first of all, of all those claims for peptic ulcer which had been previously rejected. The next group to be dealt with will be those who have been rejected because of arteriosclerotic conditions, and these will include both lifetime claims and death claims. The commission then will proceed to review the files of all who are pensioned for avitaminosis, with a view to ascertaining whether increased assessments in these cases are in order. Essentially what the commission is doing in reviewing all the Hong Kong cases in the light of the recommendations and findings in the Richardson report.

Under date of April 5th, 1966, Dr. Richardson informed the Veterans Affairs Committee of the House of Commons, as follows: ⁴

The recommendations with regard to the assessment of disability under the diagnosis avitaminosis with residual effects have not been fully understood. I recommended that a detailed review be made, based on the evidence in the individual case and on information obtained elsewhere. The next paragraph contains a suggestion that there were a great many veterans to whom increases of the order of 10 percent to 20 percent would be payable, and some for whom even greater increases may need to be considered. I would emphasize that this was a prediction and not a statement of policy. The intention was to assess the disability in each case on its merits, and to keep an open mind in the light of any new evidence that may be obtained from time to time.

I am not in a position to give precise figures, but the Committee might like to know that the total effect of all the recommendations in the report will likely be an immediate increase in the total rate of pension averaging 20 percent or more with some increases substantially greater than 20 percent.

The Veterans Affairs Committee, in its report to the House of Commons, made the following recommendation concerning assessment for disabilities of Hong Kong veterans: ⁵

General

Your Committee was most pleased with the Report prepared for the Canadian Pension Commission on the Disabilities and Problems of the Hong Kong Veterans, and wishes to congratulate Dr. Richardson and his associates for this excellent study and their sympathetic approach toward this long lasting problem.

Your Committee was much concerned with the attention given to minute aspects of the problem, and was very pleased to learn of the immediate action taken by the Canadian Pension Commission, as far as the implementation of the various recommendations in the Report. It also wishes to commend Dr. Richardson for the extreme efficiency and high degree of understanding he showed in answering the questions put to him by the members of the Committee.

Your Committee welcomes the findings of the Hong Kong Report and wishes to support the different recommendations made by Dr. Richardson.

Your Committee was also impressed by the presentation made by a delegation from the Hong Kong Veterans Association well supported by a brief from the representatives of the Royal Canadian Legion, requesting benefits going beyond the recommendations of Dr. Richardson's Report.

However, by reason of the difficulty in assessing accurately the disabilities of the Hong Kong veterans, but as recognition of some degree of uncertainty of the prognosis your Committee recommends the following:

1. When the disability found on medical examination of a veteran who was a prisoner of war in the Far East for two years or more during World War II and pensionable under the Pension Act, in accordance with the recommendations contained in Dr. Richardson's Hong Kong Report, medically assessable in the range between 33 percent to 47 percent (inclusive) (i.e. in pension classes 14, 13, or 12), the rate should automatically be increased to class 11, effective from
 - (a) 1 January 1966, or
 - (b) The date prior to the veterans's death if his death occurred on or after 1 January 1964, but before 1 January 1966,

General

(c) And subject to the provisions of Section 31 of the Pension Act provided that no further increase in the total rate of disability pension shall be made unless and until the actual disability found on medical examination is assessable at more than 52 percent (class 11 rates) whereupon disability will be assessed in accordance with the usual procedure.

2. When the pensionable disability is medically assessed at 32 percent or less, (class 15 or lower) the rate should be increased by a 10 percent special assessment with effect from January 1966, provided that when the disability found on examination reaches the level of 33 percent, the rate shall be increased to class 11, as in paragraph 1 (above).

This special assessment of 10 percent shall not be used to qualify the veterans for the benefit set out in paragraph 1.

3. Although the Pension Commission has already made a number of awards under Section 25 of the Pension Act to surviving dependents of Hong Kong veterans whose death could not be found directly attributable to Service within the provisions of Section 13(1) or to whom a pension could not be awarded under the provisions of Section 36(3), but nevertheless considered to be especially meritorious, it is strongly felt that this practice be continued and even extended.

The Commission has now reviewed all files of Hong Kong veterans, as follows: 6

1. Deceased Hong Kong veterans; --review completed
2. 1259 living Hong Kong veterans; review completed except for
 - (a) 7 veterans not yet located
 - (b) 8 veterans not interested at present
 - (c) 26 veterans where further reports necessary but delayed for various reasons beyond our control.

REPRESENTATIONS AND EVIDENCE

Sir Arthur Pearson Association of the War Blinded: Mr. W.E. Mayne, an Executive Officer of this Association, stated that there were 35 ex-members of the Hong Kong Force registered with The Canadian National Institute for the Blind. These people suffered from a number of disabilities in addition to blindness which he attributed to their imprisonment, including a loss of sensation in the hands, feet and legs, constant fatigue, chronic diarrhea or dysentery, and indigestion.

National Council of Veterans Associations: Mr. Walter Grey, representative of the Hong Kong Veterans Association, stated before your Committee: 7

The members of the Hong Kong Veterans Association put a great deal of emphasis on the doubt benefit. We find that most of our medical records were destroyed through internment in camps, and we have also been given the word, time and time again, by medical men, that they do not fully understand the full results of malnutrition and what damage that can do.

Quite often our members find that they go to private doctors, and these doctors do tell them that the symptoms they are suffering from could be caused by malnutrition and, as I say, there is really no doctor in Canada, and this has been said to us, who fully understands the full extent of malnutrition, of what malnutrition does to the body. We often find that we do not feel that we have received the full benefit of the doubt in that respect.

Canadian Corps Association: Mr. E.J. Parsons, Dominion Pensions Advocate of the Canadian Corps Association stated: 8

Their problem seems to stem almost entirely from their starvation during the period of their imprisonment and the heavy duties imposed upon them and the brutality, nervousness, things of that nature, and you have got to be very understanding with them.

I feel that they are a special case. I know the Commission called in I think one hundred of them and made a special examination of these men, with a view of trying to ascertain a basis for further consideration of their specific cases. I don't think they should have bothered just calling in the one hundred, I think every single one of them should have been called in and examined.

Representations and Evidence

Mr. John R. Matheson, M.P.: Mr. Matheson tabled a letter from Lieut-Col. John H. Price, a former Commanding Officer of the Royal Rifles of Canada and who had been imprisoned as part of the Hong Kong Force.

Col. Price's letter stated in part as follows: '9

As a rule there is often over-dramatization of what went on in these P.O.W. camps but, in this case, I can say, with complete conviction, that in all I have read of evidence at War Crime Trials, of speeches made in Parliament, in the press and in the briefs presented by the Hong Kong Veterans Association, I can find no exaggeration.

.....In fact the case may even be understated for it is difficult, if not impossible, years after the event, to re-create in mere words the misery, the suffering, the degradation, the hardship, the frustration and the torture that was inflicted on these helpless men.

Undernourished, badly housed, constantly ill with many diseases not generally prevalent or known in this country, with only the sketchiest of news from home and working long hours in coal mines, shipyards, and other industrial establishments, is it any wonder that mortality was heavy, and that the survivors were greatly affected physically and, even more important, psychologically.

On the return to Canada many, because of various disabilities, could not pursue their ordinary trades and had to adjust to a completely new life.

Since then many have adjusted reasonably well, but many have died before what could be considered their ordinary span of life and there still exist many cases of real hardship.

Mr. Matheson placed before your Committee a number of other documents including letters and references concerning the Hong Kong Force while in Japanese prison camps, and relating to the after-effects of this imprisonment.

Hong Kong Veterans Association: In its first presentation to your Committee, this Association suggested that the DVA medical staff were inclined to class the Hong Kong prisoners of war as "neurotics" when they complained of general illness.

Representations and Evidence

The Hong Kong delegation felt that their conditions were the result of ill-treatment by the Japanese guards while in captivity. Mr. John Stroud, President of the Toronto Branch of the Hong Kong Veterans Association, read into the record an excerpt from the report presented by this Association to the Veterans Affairs Committee of the House of Commons on December 3rd, 1963. This statement read as follows: ¹⁰

The psychological stresses to which Hong Kong veterans were subjected during their period of imprisonment were severe and long continued. Four years of rough treatment beatings and constant threat of torture in many forms, stress of undernourishment, inadequate clothing, along with forced labour under intolerable conditions, have left hidden personality scars which continue to lower these veterans' ability to adjust into normal civilian life.

The Hong Kong veterans suggested also that premature ageing of Hong Kong veterans should be assessed for pension purposes. The recommendation read as follows: ¹¹

Premature ageing of Hong Kong veterans has not been assessed by the Canadian Pension Commission. As a result of being prisoners of the Japanese, the Hong Kong veterans' duration of life will be shortened by ten to fifteen years. Pension to compensate for this condition should be recognized.

The Hong Kong representatives suggested that psychosomatic and other disorders that are common among Hong Kong ex-prisoners of war should be shown in the Table of Disabilities of the Canadian Pension Commission. The delegates provided your Committee with further information, and in some cases gave personal demonstrations of some of these complaints including weariness, sensations of pain in the feet, pellagra, beri-beri, swelling and inflammation.

Representations and Evidence

The recommendation of the Association was that: 12

The residual effects of avitaminosis be recognized and a basic permanent pension of 50% be awarded.

In explaining the basis of the recommendation, Mr. Bert Delbridge, Association President, referred to a Canadian Pension Commission Routine Instruction concerning the assessment for veterans suffering from tuberculosis. This Routine Instruction was subsequently identified by your Committee as Routine Instruction 2153 of April 30th, 1926, which reads as follows: 13

Circular Letter 2153, of April 30th, 1926. Section 25(3) mentioned in this instruction is Section 24(3) of the present Act.)

With effect from May 1, 1926, the Board of Pension Commissioners has approved the following procedure regarding the assessment of cases of pulmonary tuberculosis which have been clinically active during a period of treatment:

1. That pensions awarded in accordance with the provisions of Section 25(3) as enacted June 27th, 1925, for disability resulting from pulmonary tuberculosis when during treatment the presence of tubercle bacilli has been discovered in the sputum or it has been proved that the disease is moderately advanced and clinically active, will not at any time thereafter be assessed at less than 50%.
2. That pensioners at May 1, 1926, in receipt of pension at the rate of 50% or higher awarded in accordance with the provisions of Section 25(3) of the Statute as enacted June 27, 1925 on account of pulmonary tuberculosis whose cases conform to the provisions of the foregoing paragraph, will not at any time thereafter be reduced to an assessment less than 50%; and
3. That pensioners at May 1, 1926, in receipt of pension awarded in accordance with the provisions of Section 25(3) of the Statute as enacted June 27, 1925, on account of pulmonary tuberculosis at a rate less than 50%, will be entitled to consideration under the provisions of paragraph 1 above should the presence of tubercle bacilli be again discovered in the sputum, or should it be proved that the disease has again become moderately advanced and clinically active.

Representations and Evidence

The intention of Circular Letter 2153 was that no pension for pulmonary tuberculosis under the provisions of Section 24(3) should be reduced below 50%.

The Honourable Mr. Gordon Churchill, PC, MP: Mr. Churchill considered that the benefit of the doubt clause should be applied to the Hong Kong veterans. He stated: ¹⁴

I would have no hesitation, with regard to the Hong Kong veterans, applying the benefit of the doubt clause. Surely their case has been proved up to the hilt. With a few exceptions, those men - their expectation of life has been shortened and they have all suffered in the interval. I would not hesitate at all with regard to those.

Mr. David Groos, MP: In a prepared brief, Mr. Groos made the following submission on behalf of the Hong Kong veterans: ¹⁵

I have had a special interest in this group ever since I first saw the Far East prisoners of war returned to England through the West Coast of Canada in the fall of 1945. I introduced a motion into the House of Commons, asking for a special study to be made of their condition and needs, but the initiative was taken out of my hands by the government of which I am a member, a few moments before I presented my case, when the Minister of Veterans Affairs announced the establishment of the investigation which is known now as the "Brother Survey" which was conducted by Dr. H. J. Richardson of the Canadian Pension Commission. I like to think that they were prompted to make this survey by the knowledge that my Notice of Motion was coming up in the House, but that is purely personal conjecture. It is a bit early for me to comment intelligently on Dr. Richardson's report, or on the government's proposed actions which will be based on his report, as we don't yet have enough information on what the government plans to do. However, the initial reaction to the report itself from the Hong Kong veterans, on the whole seems to be favourable.

My investigation into Canadian Hong Kong prisoners of war took me to the United Kingdom, where I had some interesting conversations with U.K. authorities who, of course, have a much greater problem than we do with their vast number of Far East Prisoners of War (FEPOWs). I discovered that they have special rules within their Veterans Affairs department for FEPOWs, and I believe most earnestly that we should duplicate some of them in

Representations and Evidence

Canada for our own Hong Kong veterans. I would like the support of the Canadian Pension Commission in instituting these arrangements.

In the United Kingdom the Government maintains a record of the whereabouts of all FEPOWs. When one of their number dies, the authorities are immediately notified and, unless special instructions to the contrary are given for personal reasons, they require an autopsy to be carried out. The doctor conducting the autopsy is directed to pay special attention to certain areas. The autopsy reports are all sent to a central officer where they are studied by experts in the after-effects of tropical diseases, malnutrition, etc. On the basis procedure, they are able to establish whether or not death was caused, or hastened by the after-effects of their war-time incarceration in the Far East. If so, their Pension Commission is empowered to rule on survivor and other benefits.

I believe that we in Canada should set up a similar organization and follow a generally similar practice. The numbers we have to deal with are not great. We know where most of the Hong Kong veterans are, because the great majority of them are already drawing disability pensions of some degree or other. It should be comparatively simple for us to arrange for these autopsies to be carried out and for the records to be sent to a central office. We may have to train a special staff to survey records, but it is our responsibility towards these men and I would like the Canadian Pension Commission's support.

Mr. Jack Bigg, M.P.: In a prepared brief, Mr. Bigg made the following submission on behalf of the Hong Kong veterans: ¹⁶

Premature Aging of Hong Kong Veterans

The evidence submitted by the Hong Kong Veterans Association in the brief to the Standing Committee on Veterans Affairs on December 3rd, 1963, dealt with the severe after-effects of imprisonment, as experienced by Hong Kong veterans. In particular, the brief referred to the studies by Dr. J.N. Crawford, J.D. Adamson, and Major-General Sir Robert McCarrison.

These studies, together with other available information with respect to the after-effects of this form of imprisonment must necessarily be taken as evidence that these ex-prisoners of war subject to many forms of disease and illness which remain practically unknown in general medical circles in Canada.

Representations and Evidence

It is considered that this information is sufficient to permit the Canadian Pension Commission, utilizing the benefit of the doubt, to grant a basic 50% entitlement for persons who are known to have suffered vitamin deficiency, mental torture, and physical abuse to the extent as indicated in the records of the Hong Kong Force.

Notwithstanding this information, the Canadian Pension Commission has conducted what was called a "Brother's Survey" under which 100 ex-Hong Kong P.O.W.s and 100 of their brothers who served in the Canadian Armed Forces but not P.O.W.s were surveyed. The results of this survey was as follows:

- (1) Psychiatric and neurological disabilities -- no firm conclusion was reached but the Canadian Pension Commission and Treatment Services should take into account the information in the report in assessing these disabilities.
- (2) Peptic Ulcers - the Commission should consider on the merits of each claim, the extent, if any, that service attributability can be conceded.
- (3) Dental Diseases - free treatment to be granted
- (4) Heart Disease - a possible partial relationship exists between internment in the Far East and the appearance of clinical heart disease.
- (5) Avitaminosis - there are a great many pensioners to whom increases of the order of 10% to 20% will be payable, and some for whom even greater increases may need to be considered.

The following observations are made:

- (1) These recommendations are inconclusive. Two of these areas mentioned above (i.e. heart disease, and avitaminosis) involve diseases which can cause death. Also, both are areas where medical knowledge is incomplete, and this is more particularly true of avitaminosis. In view of these factors, it is considered that the request of the Hong Kong Veterans Association for a 50% minimum pension is understandable and justifiable.

This request is based on a number of specific points including:

- (a) The death rate of Hong Kong Force has been higher than that of the normal population;

Representations and Evidence

(b) There is urgent need to provide protection for widows and children in the event of the death of the member of the Hong Kong Force from reasons which may not be directly related to his pensionable disability but which may, notwithstanding, prove to have been a direct result:

- (i) if all the facts could be ascertained; and
- (ii) if our medical knowledge on tropical diseases progresses.

(2) The recommendations in the report by Dr. Richardson concerning retroactivation are insufficient, under the circumstances.

The following comments are made:

(a) The Hong Kong Veterans Association has recorded deaths of a number of their members from "unknown causes" going back to 1948. The widows were not pensioned, and Dr. Richardson's report makes no provision for consideration in this regard.

(b) The report does contain some indication that the medical and neurological condition of Hong Kong veterans is worse than the general population, and is worse than male members of the same family who served in other theatres of war. This would appear to be a frank admission that the policy of the Canadian Pension Commission has been incorrect, in not making provision for proper entitlement and assessment of such diseases at an earlier date. Accordingly, it would appear fully justifiable that retroactivation be awarded going back to the date of application for pension.

(3) There are two general problems arising out of the study of Hong Kong pensioners as detailed below:

(a) Entitlement decisions: It seems obvious from the information in the documentary report, that the Canadian Pension Commission has not been exercising the "benefit of the doubt", and;

Representations and Evidence

- (b) Medical Assessment: The major deficiency in Hong Kong cases would seem to be the actual assessment of the degree of disability. The fact that many Hong Kong veterans have had difficulty in obtaining what would appear to be a proper assessment, once they have been awarded pension entitlement emphasizes the need for some method of appeal on medical assessment, in the event that the pensioner considers that his disability warrants a higher percentage of pension.

Mr. Rene Emard, M.P.: Mr. Emard, in a prepared brief, made the following submission on behalf of the Hong Kong veterans: 17

This group of some twelve hundred veterans is deserving of the fullest consideration it is possible to give under the Pension Act. They returned from nearly four years of imprisonment in the Far East as physical wrecks. In many cases, also, they bore psychological scars which will be with them all of their lives. I should like to make three specific recommendations, for consideration.

- (a) That the Pension Commission be required to review every Hong Kong veterans file without waiting for him to apply for pension action, and that the Commission give individual consideration, having due regard for the after-effects of long-termed imprisonment.
- (b) In carrying out the individual review the Canadian Pension Commission give the widest possible interpretation to the serious effects suffered by the Hong Kong veterans, as brought out in the report of Dr. H.J. Richardson of the Canadian Pension Commission.
- (c) Undue emphasis should not be placed on the fact that some Hong Kong veterans do not receive pension. I personally know several veterans who have not applied for pension although, in my opinion, they would be entitled to receive pension if they did so.....

It does appear to me that there are some members of the Hong Kong Force who, because of good economic circumstances, do not need a pension and have not bothered to apply for one. Also, it is necessary to bear in mind that out of the total Hong Kong some personnel (mostly officers) did not receive the same brutal treatment, as was experienced by the majority of the Hong Kong veterans. These few, who were accorded special privileges, did not suffer to the same extent as the remainder of the Hong Kong Force, and it is understandable that their need for pension today would not be as great.

Representations and Evidence

Hong Kong Veterans Association: This Association submitted a supplementary brief to your Committee under date of April 13th, 1966. The delegates filed also a letter to the Chairman of your Committee. The contentions in these documents were that the Hong Kong veterans were in ill health on their return to Canada from the Far East and should have been granted entitlement and have been pensioned at 100% where avitaminosis existed. Then, if their condition improved, the pension assessment should have been reduced gradually to a basic assessment of 50%, at which it should have been considered as arrested, similar to veterans holding entitlement and pensioned for tuberculosis, where such has been positively identified as being in an active state.

This brief is available in the records of your Committee for examination. No attempt is made herein to convey its full import; only the highlights are given.

Prisoner of War Conditions: The brief expressed the view that only persons who had experienced the horror of the Japanese prison camps could understand the present-day apprehension of ex-members of the Hong Kong Force. Reference is made to the code of the Japanese soldier which encouraged inhumane treatment, mental and physical torture, day-to-day starvation of Canadians of the Hong Kong Force who were taken prisoner. The brief stated that of the total of 1,666 members of the Force taken into captivity, 267 died in Japanese prisoner of war camps.

Psychosomatic Consequences of Captivity: The brief referred to literature available on the effect of the mental and physical well-being of ex-Far East prisoners of war, and gave a resume of information of the psychosomatic effects of privation, enforced work and lack of medical attention.

Post-war Developments: The Association was deeply concerned about the number of its members who were seriously ill and who had died since their return to Canada. The number of such deaths was given as 135. The brief asked that, in view of the high incidence of fatal diseases being experienced by the ex-Hong Kong prisoners of war, the Government should take action to ensure that pension would be put into payment for their families in the event of their death, regardless of whether or not there was clear-cut evidence that such death was attributable to service factors.

Representations and Evidence

Royal Canadian Legion: Under date of May 4th, 1966, Mr. F.M. Thompson, Dominion Secretary of the Legion, forwarded to your Committee a copy of a resolution approved at their Dominion Convention April 21st, 1966.

This resolution read: *

WHEREAS the Pension Act defines disability as the loss or lessening of the power to will and to do any normal mental or physical act; and

WHEREAS twenty years after the liberation of the Hong Kong prisoners-of-war from 42 months' captivity there is conclusive evidence of the nature and course of some of their disabilities, for example, optic atrophy, neurological disorders, etc; and

WHEREAS there is also impressive evidence though perhaps not wholly conclusive, of widespread gastro-intestinal, neuromuscular, cardiovascular and nervous symptoms and fatigue; and

WHEREAS the report of the Medical Adviser of the Pension Commission recently published states that a fairly large proportion of these former prisoners receive disability pensions not commensurate with the evidence of disability and the present understanding of it:

THEREFORE BE IT RESOLVED THAT -

- (1) an award of a minimum of 50% for the residual effects of their imprisonment be paid to every ex-Japanese P.O.W. of World War II,
- (2) where ex-Japanese P.O.W.'s have died since release from captivity and their widows have not been granted pension, steps be taken to make awards on the basis that death was service-related,
- (3) arrangements be made for yearly pension medical examinations for all ~~ex~~ ex-Japanese P.O.W.'s.

Mr. T.M. Bell, M.P.: Mr. Bell, in a prepared brief, made the following submission on behalf of the Hong Kong veterans:

* A copy of this resolution is contained in the records of this Committee.

Representations and Evidence

It is understood that representations have been made to your Committee on behalf of members of the Hong Kong Force, and that a reappraisal is being made of the pension benefits for these ex-prisoners-of-war. In this brief, I only wish to mention my thoughts on Section 25 and their possible application to members of this Force.. The three suggestions which I have in mind are as follows:

- (1) Veterans who survived the ordeal of 44 months imprisonment at the hands of the Japanese should be entitled to the most generous pension benefits under the regular Sections of the Act.
- (2) If, because of some technicality, pension cannot be approved for a Hong Kong veteran under the regular sections of the Act, then fullest possible consideration should be given to a compassionate award under Section 25; and
- (3) Where the death of an ex-member of the Hong Kong Force occurs, or has occurred sometime in the past, and the circumstances are such that the Commission cannot put pension into payment for the widow under the regular sections of the Act, consideration should be given to an award under Section 25 if the circumstances would warrant such award.¹⁸

In explanation, Mr. Pull stated that he viewed the Hong Kong veterans as being in a special service category who would be entitled to the same consideration as the recipients of gallantry awards. He stated that, in his opinion, those who served in the Hong Kong Force should all be entitled to a favourable interpretation of meritorious service.

COMMITTEE RECOMMENDATIONS

- (92) That consideration be given to the enactment of special legislation to provide a basic minimum pension of 50% for all former members of the Hong Kong Force who were interned as prisoners-of-war by the Japanese, provided that application is made for same and the former member has an assessable degree of disability.

Basic
Minimum
50% Pension
For All
Former
Hong Kong
Force Members

- (93) That widows of ex-members of the Hong Kong Force be eligible for consideration of an award of widows pension under Section 25 of the Pension Act, where the ex-member has died prior to the inception of this legislation, and that this eligibility be based on the presumption that, unless rebutted, the death was attributable to service.

Widows of
Hong Kong
Force Members
Eligible for
Section 25
Award on
Presumption

COMMENTSpecial Act of Parliament

General: A large number of the ex-members of the Hong Kong Force are already in receipt of disability pension at a rate of 50% or more. It is assumed that, in most instances, these assessments are for medical conditions which are found to apply commonly throughout the Hong Kong group. As these persons underwent an identical experience, it would appear that the difference between the group rated at 50% or more, and that rated below 50% is one of degree only.

Extent of the Disability: The question of degree, as it applies to the pensionability of ex-members of the Hong Kong Force, requires careful examination. Section 28(1) of the Pension Act provides that pension for a disability shall be awarded in accordance with the extent of that disability. Your Committee considers that this principle should apply for ex-members of the Hong Kong Force, to disabilities rated in excess of 50%. In other words, a member with a disability of 80% should receive more pension than one of 60%. There are good grounds to suggest, however, that there should be a floor or basic minimum of 50% pension for this group. The suggestion herein is that the first 50% of pension should be based on factors other than the assessable degree of disability, and should be authorized as special legislation. To amend the present statute to meet the requirements of this special group would not seem practical as they are in a category, the military experiences of which are not likely to be repeated.

Compensation for Special Factors: Your Committee considers that pension up to 50% should be awarded to ex-members of the Hong Kong Force in the form of an award for meritorious service, based on:

2

Comment

- (a) The circumstances under which this force served.
- (b) The privations experienced by these members while held as prisoners of the Japanese.
- (c) The seeming difficulty of making an accurate estimate of the residual medical effects of this imprisonment.

Special Circumstances Relating to Hong Kong Force: Pursuant to Order-in-Council PC 1160 of February 12th, 1942, the Right Honourable Sir Lyman P. Duff, Chief Justice of Canada, was appointed to conduct a Royal Commission enquiry into the organization and despatch of the Hong Kong Force.¹⁹ He was required to enquire as to whether there occurred any dereliction of duty or error in judgement in regard to the authorization, organization and despatch of this expeditionary force. Chief Justice Duff submitted his report to the Prime Minister under date of June 4th, 1942:²⁰

Regarding the decision to authorize the expedition the report stated:²¹

The principal considerations prompting the invitation by the Government of the United Kingdom to the Government of Canada to send reinforcements to Hong Kong (two battalions of infantry with first reinforcements, and by subsequent communication a modified headquarters staff) are set forth in the telegram containing that invitation, dated September 19, 1941. These considerations were largely those which influenced the Canadian Government in accepting the invitation. I have been unable to obtain the consent of the Government of the United Kingdom to the textual reproduction of this telegram.

A paraphrased version of this telegram was printed in the official History of the Canadian Army 1939-1945. It read:²²

United Kingdom Government has been conferring with late G.O.C. who has lately returned to this country upon the defences of Hong Kong. In the event of war in the Far East accepted policy has been that Hong Kong should be considered as an outpost and held as long as possible. We have thought hitherto that it would not serve any ultimate useful purpose to increase the existing army garrison which consists of four battalions of infantry and represents bare minimum required for its assigned task.

Comment

Situation in the Orient however has now altered. There have been signs of a certain weakening in attitude of Japan towards United States and ourselves. Defences of Malaya have been improved. Under these conditions our view is that a small reinforcement (e.g. one or two more battalions) of Hong Kong garrison would be very fully justified. It would reassure Chiang Kai Shek as to genuineness of our intention to hold the colony and in addition would have a very great moral effect throughout the Far East. This action would strengthen garrison out of all proportion to actual numbers involved and would greatly encourage the garrison and the colony.

We should be most grateful if Government of Canada would give consideration to providing for this purpose of one or two Canadian battalions from Canada. Your Government will be well aware of difficulties now being experienced by us in providing the forces demanded by the situation in various parts of the world, despite the very great assistance which Dominions are furnishing. We consider that Canadian Government in view of Canada's special position in the North Pacific would wish in any case to be informed of the need as seen by us for reinforcement of Hong Kong and the special value of such measure at present time, even though on very limited scale. The fact that the United States have recently sent a small reinforcement to the Philippines may also be relevant. If the Government of Canada could co-operate with us in the suggested manner it would be of the greatest help. We much hope that they will feel able to do this.

We would communicate with you again regarding the best time for despatch in the light of the general political situation in the Far East if your government concur in principle in sending one or two battalions.

The decision to despatch the Hong Kong Force was made by the War Committee of Cabinet. In regard to the reasons for this decision the Royal Commission report stated: 23

The evidence discloses various reasons which appear to have actuated the War Committee. In view of what other Dominions had done in Abyssinia and Libya it was Canada's turn to help; Canada ought to share in the responsibility for garrisoning the Pacific area, just as Australia was assisting in Malaya; the military value of the reinforcement would be out of all proportion to the numbers involved; the arrival of the contingent in Hong Kong would have a great moral effect in the whole of the Far East and would reassure the Chinese as to the British intention to hold Hong Kong; the moral effect of the expedition might operate as a sensible influence for the

Comment

preservation of peace there; at that juncture, in September, to gain time was beyond measure important; such an appeal from the predominant partner in the common cause could not be rejected.

Concerning the propriety of this decision the report stated: 24

It would perhaps be a possible view that the propriety of this decision by the Government is exclusively matter for consideration and discussion by Parliament. Since, however, I am required to pass upon the question, it is my duty to say that I have no doubt the course taken by the Government was the only course open to them in the circumstances.

The evidence placed before the Commissioner was to the effect that the Hong Kong battalions suffered from a shortage of weapons. In this regard the Report stated: 25

The principal criticism directed against this selection concerns certain platoon weapons which are included in the establishment of a Canadian infantry battalion, but which, before October, 1941, were not available generally for training purposes to the Canadian Active Army. General Crerar says: -

"There were, however, in Canada at the time in question a number battalions (among which were Royal Rifles and Winnipeg Grenadiers) which, although somewhat handicapped by lack of supplies of certain platoon weapons (mortars and anti-tank rifles), in my opinion were generally adequately trained to undertake defensive responsibilities such as those in prospect in Hong Kong."

He adds: -

"The short supply of mortars and anti-tank rifles was general in all units of the Canadian Army and not peculiar to the Royal Rifles and the Winnipeg Grenadiers."

This, he adds, is the natural and inevitable handicap of a country which is unprepared for war and has war brought upon it.

The evidence placed before the Royal Commission concerning the obligation of Canada was as follows: 26

Comment

General Crerar proceeds:

"It is evident that Major General (now Lieutenant-General) Grasett presented the same views to the War Office and to the Chiefs of Staff Committee on his return to London that this appreciation of the situation at Hong Kong, with the need for two additional battalions, was accepted in London and that the request to Canada for the provision of these additional troops immediately followed."

It was with minds actuated by a deep sense of the obligations of Canada in relation to the common cause that the members of the War Committee (The Prime Minister, Hon. T.A. Crerar, Major Power, Mr. Macdonald), as well as the Chief of the General Staff, gave their attention to the proposal of the British Government; and the evidence of Colonel Ralston, Major Power and Mr. Macdonald shows explicitly that to them, and to the War Committee as a whole, the proposal summarizes what they regarded as reasons of great weight which, taken together with the broader considerations that are mentioned by them in their evidence, dictated an affirmative answer. They all had in mind, to use Colonel Ralston's phrase, that "it seemed as if it was Canada's turn to help." Colonel Ralston says: -

"That is to say, Australia had been doing a great deal in Libya and elsewhere; the New Zealanders had been in Crete; and the South Africans had been in Abyssinia. I am not sure whether I knew that the Australians had gone to Singapore or not. Then the United States had strengthened their garrisons in the Philippines and that also influenced us in connection with it."

The Commissioner enquired into the training of the re-inforcements for the Hong Kong battalions. The evidence placed before him was to the effect that approximately 120 men included in the expedition had not completed their prescribed period of training.²⁷

The report indicated that the vehicles for the Hong Kong Force failed to reach it before the outbreak of hostilities. In this regard the Commissioner reported:

Comment

This miscarriage was not in any way due to any fault or mistake, of any officer of the Canadian Forces, or of any official of the Canadian Government.

There was a small amount of free cargo space in the ship carrying the force and some twenty vehicles were sent to Vancouver to fill it. These, however, did not arrive before the ship sailed. Had more energy and initiative been shown by the Quartermaster General's Branch, charged with the movement of the equipment for the force, the availability of this space would have been ascertained earlier and the vehicles would have arrived in time for loading on October 24; and there is, in my opinion, no good reason for thinking that, had they arrived at that time, they would not have been taken on board. There is no evidence, however, that the troops suffered through the lack of them, or that they were not supplied at Hong Kong.

The Commissioner reached the general conclusion as follows: ²⁹

In October, 1941, the Canadian military authorities undertook a task of considerable difficulty. Subject only to my observation concerning twenty of the two hundred and twelve vehicles of the mechanical transport they performed that task well. Canada sent forward in response to the British request, an expedition that was well-trained and (subject as aforesaid, in so far as shipping facilities allowed) well provided with equipment. In spite of the disaster that overtook it soon after its arrival in Hong Kong, it was an expedition of which Canada can and should be proud.

The war came upon us when we were unprepared for it. In such circumstances, recalling military history, one would perhaps not be greatly surprised to discover that even two years after its commencement some military enterprise had been undertaken which had proved to be ill-conceived, or badly managed. The Hong Kong expedition falls under neither description.

It is evident, from the information in Sir Lyman Duff's report, that the Hong Kong Force was required to meet an urgent obligation of Canada, and in the carrying out of this obligation, the Force met a disaster which, although found not to have resulted from any error of judgment or dereliction of duty, did produce dire consequences for the members involved.

Comment

In view of this, your Committee suggests that the circumstances under which the Hong Kong Force served were such that the members of the Force could be entitled to special consideration in regard to pension.

Privation During Imprisonment: The members of the Hong Kong Force were captured by the Japanese Army in December 1941 and were among the first Allied servicemen to be taken as prisoners of war. They were released in September, 1945. They were subject to the same severe treatment at the hands of the Japanese as other Allied prisoners, and for a considerably longer period than most.

The Official History of the Canadian Army deals with the hardships of the Hong Kong Force in the following terms: ³⁰

Canada's losses in this tragic episode were heavy. A total of 23 officers and 267 other ranks were killed or died of wounds. * This includes a number who were wantonly murdered by the Japanese at the time of their capture or shortly afterwards. The enemy sullied his victory at Hong Kong by acts of barbarism worthy of savages; there were particularly brutal outrages against the patients and staffs of hospitals and aid posts. ** The number of Canadians wounded in action cannot be established, but it was large.

The harrowing experiences of the prisoners can only be outlined here. Until early in 1943 all the Canadians were kept in camps at Hong Kong. Mainly as a result of conditions in these camps, four officers and 125 other ranks died there; among these were four soldiers shot by the Japanese without trial when captured after escaping. ***

* Brigade Headquarters, four officers and 15 other ranks; Royal Rifles of Canada, seven officers and 123 other ranks; Winnipeg Grenadiers, 12 officers and 128 other ranks.

** Major-General (formerly Col.) Tanaka Ryosaburo, who commanded one of the infantry regiments which attacked the island, was in due course tried by a War Crimes Court for his part in these atrocities and sentenced to twenty years' imprisonment.

*** Col. Tokunaga, Commandant of the Hong Kong prison camps, and Capt. Saito, Medical Officer, were tried by a War Crimes Court at Hong Kong in October 1946 --February 1947 and sentenced to be hanged. The sentences were subsequently commuted to life imprisonment and twenty years' imprisonment respectively.

Comment

A diphtheria epidemic in the summer and autumn of 1942 took many lives. From January 1943 onwards a total of one officer and 1183 other ranks were taken to Japan, where they were forced to work in various industries, chiefly mining. Here again conditions were extremely bad, as evidenced by the fact that some 135 of these men died. Of the 1973 Canadian soldiers who sailed from Vancouver in October 1941, there were 555 who never returned to Canada.

The sudden attack by Japan resulted in the Canadians who helped to defend Hong Kong going into battle in very unfavourable circumstances. Dispatched to the Far East to serve as garrison troops, at a time when, as we have seen, immediate hostilities were not considered probable, they found themselves plunged abruptly into action without having undergone the concentrated and rigorous battle training which later fitted Canadian soldiers for operations in Italy and North-West Europe. They had no chance for the gradual acquisition of battle wisdom through experience. The extraordinarily rugged and largely unfamiliar terrain of Hong Kong was one of the hardest battlefields on which Canadians fought in any theatre; and after their long sea voyage, followed by brief training for a static role which was never realized, the Royal Rifles and Winnipeg Grenadiers were not in the best of shape for fighting on scrub-covered mountainsides. These adverse circumstances inevitably reduced the units tactical efficiency. How hard they fought in spite of such conditions, their casualty lists fully and poignantly show.

The book entitled "The Knights of Bushido" written by Lord Russell of Liverpool comments upon the brutal treatment accorded their prisoners by the Japanese, and provides information which your Committee considered to be pertinent. Some excerpts are recorded below: 31

From the beginning of the Pacific War the generally accepted regulations concerning the custody of prisoners of war and civilian internees were flagrantly disregarded. Prisoners of war were murdered by shooting, decapitation, drowning, and other methods. They died during death marches on which prisoners of war who were sick and quite unfit for any form of exertion were forced to march for long distances in conditions which even fit troops could not have been expected to stand. Many of those who fell out of the column were shot or bayoneted to death by the escort.

One man had died on the original voyage to Hong Kong.

There was forced labour in tropical heat, without any protection from the sun, and thousands of prisoners died whilst working on the Burma-Siam railway, upon the construction of which they should never have been employed.

In the prison camps the conditions were appalling. The accommodation was inadequate, the sanitation non-existent, and the absence or scarcity of medical supplies resulted in thousands of deaths from disease.

Prisoners were systematically beaten and subjected to a variety of tortures in attempts to extract information from them, or for minor disciplinary offences committed by them in the camps. Prisoners of war, recaptured after escaping, were shot, and captured aviators beheaded, in the usual Japanese method by sword. Even cannibalism was not unknown.

The above list is by no means exhaustive, and many other examples of brutality and ill-treatment will be found in the succeeding chapters which describe in some detail these horrible crimes.

The extent of the ill-treatment, however, can be appreciated from this significant comparison. In the European theatres of war 235,473 British and American prisoners of war were captured by Germans and Italians. Of this number 9,348 or 4 percent of the total, died in captivity. In the Pacific theatres of war the percentage was 27. A specific reference to the Hong Kong Force was as follows: ³²

Nimori's activities were not solely confined to the voyage of the Lisbon Maru. He made another voyage a few months later, again as interpreter, on a transport named Toyanna Maru, which was taking a draft of Canadian prisoners of war from Hong Kong to Japan.

During the voyage some of the prisoners, who had been given sweaters by the Red Cross, sold them to their guards in exchange for food. This came to the ears of Nimori who held a kit inspection. One prisoner, a Canadian soldier named Rifleman Doucet, of the Royal Rifles of Canada, was unable to produce his sweater on the inspection. Nimori and a Japanese corporal then set about Doucet in a most brutal manner. He was beaten with a belt, hit all over the body, knocked down, and while on the ground was kicked in the stomach. After this assault Rifleman Doucet had to be carried below, and was very ill for the remainder of the voyage. He never recovered and about a month later died at Narumi Camp in Japan.....

Comment

Concerning the treatment of prisoners of war, the book states: 33

This final chapter on the treatment of Allied prisoners of war describes conditions in some of the many prison camps in which thousands lost their lives, and where death was often a merciful release from unendurable suffering.

Early in 1942 the Japanese Government undertook to take into consideration the national customs and racial habits of their prisoners and internees when supplying such things as food and clothing, but this promise was never kept. When large numbers of prisoners began to die or to become ill from malnutrition it must have been obvious to the Japanese authorities that one of the causes was that owing to their different national dietary customs and habits, the American, Australian, British, Dutch and French prisoners could not remain healthy on the rations issued.

Some general comments in Lord Russell's book follows:

Many of those who survived captivity will carry its marks upon them for the rest of their lives, and for many more the expectation of life has been considerably shortened.

The practice of torturing prisoners of war and civilians prevailed wherever Japanese troops were in occupation and at many places, also, in Japan.

The Japanese indulged in the practice throughout the war, and there was so much uniformity in the methods used that there can be no doubt that it was the result of a definite policy adopted by the armed forces with the knowledge and approval of the Imperial Government.

Throughout the Sino-Japanese and Pacific wars, in every theatre of operations, unspeakable cruelties and merciless tortures were inflicted upon thousands of Allied prisoners of war and innocent civilians by all ranks of the Japanese armed forces, without any compunction and, for the most part, without any feelings of compassion whatsoever.

Comment

Estimating the Disability: The Pension Act is intended to provide sums of money as compensation for disability or death partly as a mark of gratitude, partly in payment for a debt for services rendered and partly for subsistence for loss of earnings.*

The only criterion which can be recognized in estimating the amount of the pension due for a disability is the extent of that disability, measured in acceptable medical standards. The Pension Commission follows the practice of estimating disabilities which are of a "recognizable" nature through reference to a Table of Disabilities which provides standard rates for these medical classifications, usually expressed as a percentage in accordance with varying degrees of severity.

This system appears satisfactory. It is, however, more easily applied to amputation and other obvious disabilities than to diseases. The medical condition which was found to exist in many ex-members of the Hong Kong Forces was apparently of such general nature that no accepted medical term could be used to identify it. Accordingly, the condition came to be known as "avitaminosis" which is presumably a special word coined to describe the after-effects of malnutrition among this group.

It seems there is difficulty in estimating the residual medical effects of the imprisonment of the Hong Kong Force, using the standards of measurement which the Commission can apply to more easily categorized medical conditions. Also, there may be a real difficulty in attempting to determine the future course of these medical conditions.

* See Chapter 13 hereof dealing with Medical Rate.

Comment

Your Committee considers, therefore, that if the difficulty of assessment is greater in the case of ex-members of the Hong Kong Force than would apply generally to disabilities incurred during, attributable to, arising out of or directly connected with military service, it is justifiable that special pension provision be made for them. In making such provision, a basic 50% pension should be allowed, both on the grounds that this represents justifiable recompense for the extent of the disability and the special circumstances of their service, and also to provide protection for their dependants under the Pension Act, should the pensioner die from causes which are difficult to determine whether such were attributable to his pensionable condition.

Your Committee's recommendation envisages that where, under the ordinary standards of assessment used by the Commission, a disability is greater than 50% in extent, the pensioner should receive the first 50% of his pension under the proposed special legislation, and the additional percentage under the regular Pension Act.

Compassionate Pension for Widows

Your Committee has made a second recommendation in regard to Hong Kong veterans, to the effect that non-pensioned widows of ex-members of the Hong Kong Force be eligible for consideration of an award of widow's pension under Section 25 of the Act where the ex-member has died prior to the inception of the legislation being proposed herein. It is suggested that pension be approved on a presumption that the death was attributable to service, unless such presumption can be rebutted, in which case the provision would not apply.

Comment

The justification for this recommendation is based on the requirement to ensure that the benefit of the doubt is extended in cases where the ex-member has died, and where there may be some possibility that his death was, in actual fact, attributable to his service as a member of the Hong Kong Force.

Presumably there are many imponderables in regard to such deaths. For one, an ex-member of this Force who died several years ago may have been suffering from medical effects which could not be diagnosed at that time. Subsequently a diagnosis may have become feasible in view of advanced knowledge of the after-effects of his imprisonment, but cannot be done posthumously. Your Committee is not suggesting that widows in this category should automatically be given pension. It does seem reasonable, however, that they should be entitled to a presumption that the death was attributable to service, and that this presumption should stand unless the Commission has evidence that it is not so.

HONG KONG VETERANSREFERENCES

1. Pension Act, R.S.C. 1952, C.207.
2. News Release No.125, dated December 22nd, 1965 by the Minister of Veterans Affairs.
3. House of Commons Debates, March 21st, 1966, Page 2936.
4. Minutes of Proceedings and Evidence, Standing Committee on Veterans Affairs, March 21st, 1966, Page 2936.
5. Ibid, May 27th, 1966, Page 248.
6. Letter, dated March 13th, 1967 from Chairman, Canadian Pension Commission to the Secretary of your Committee.
7. Proceedings of Committee Sessions, Volume I, Page F-38.
8. Ibid, Volume II, Page I-35.
9. Ibid, Volume IV, Page P-25 -26.
10. Ibid, Volume II, Page H-16.
11. Ibid, Volume II, Page H-19.
12. Ibid, Volume II, Page H-31.
13. Canadian Pension Commission subject file on Section 28(3).
14. Proceedings of Committee Sessions, Volume V, Page T-6.
15. Ibid, Volume V, Page W-2.
16. Ibid, Volume V, Page Y-27.
17. Ibid, Volume V, Page Z-3.
18. Ibid, Volume VI, Page EE-12.
19. P.C. 1160, dated February 12th, 1942.
20. Report on the Canadian Expeditionary Force to the Crown Colony of Hong Kong by the Rt. Hon. Sir Lyman Duff, C.G.M.A., Royal Commissioner, pursuant to Order-in-Council, P.C. 1160, June 4th, 1942.
21. Ibid, Page 3.
22. The Canadian Army, 1939-1945, by Col. C.P. Stacey, Page 273.
23. Report on the Canadian Expeditionary Force to the Crown Colony of Hong Kong by the Rt. Hon. Sir Lyman Duff, C.G.M.A., Royal Commissioner, pursuant to Order-in-Council, P.C. 1160, June 4th, 1942. Page 4.
24. Ibid, Page 4.
25. Ibid, Page 5.
26. Ibid, Page 14.
27. Ibid, Page 45.
28. Ibid, Pages 7 and 8.
29. Ibid, Page 8.
30. The Canadian Army, 1939-1945, by Col. C.P. Stacey, Pages 278 to 288.
31. "The Knights of Bushido" by Lord Russell of Liverpool, Cassell, London Page 50 et seq.
32. Ibid, Page 126.
33. Ibid, Page 149.

MEDICAL ADVISORY BRANCHGENERAL

The Medical Advisory Branch has been established to provide facilities through which the Pension Commission can make inquiry on medical matters, as required by Sections 59(1) and 60(1) of the Pension Act which read as follows:

59(1) When an application with respect to service in World War I or in peace time is first made to the Commission after the 1st day of August, 1936, the Commission shall expeditiously consider such application and shall collect such relevant information, if any, as may be available in the records of any department of the Government of Canada and make, through its medical and other officers, such inquiry as appears advisable into the facts upon which the application is based; if satisfied on the material available, that the applicant is entitled to a pension, the Commission shall then award such pension and shall take the necessary steps to cause payment of such pension to be made.

60(1) In respect of all applications for entitlement to pension arising out of World War II the Commission shall expeditiously consider each application and shall collect such relevant information, if any, as may be available in the records of any department of the Government of Canada and make, through its medical and other officers, such inquiry as appears advisable into the facts upon which the application is based; if satisfied, on the material available, that the applicant is entitled to a pension, the Commission shall then award such pension, and shall take the necessary steps to cause payment of such pension to be made.

The organization of the Medical Advisory Branch is as follows

- Chief Medical Adviser
- Deputy Chief Medical Adviser
- Bilingual Assistant to Chief Medical Adviser
- Five Chiefs of Divisions, as follows -
 - Gunshot Wound and Accident
 - General Diseases
 - Heart and Lung
 - Eye, Ear, Nose and Throat
 - Neurology and Psychiatry
- Twelve Medical Advisers *
- Stenographic and Clerical Staff

* As of January 25th, 1967.

General

The duties of the Medical Advisory Branch, as set out in a letter to your Committee from Dr. H. J. Richardson, Deputy Chief Medical Adviser, under date of January 25th, 1967, are as follows: ¹

Workload of the Medical Advisory Branch

1. Processing applications for pension entitlement, as follows:

- (a) Examining all evidence relating to the claim.
- (b) Instructing the District Office or informing an advocate or an applicant, as the case may be, with respect to the need of additional evidence; authorizing Departmental examination when appropriate, or suggesting examination at the applicant's expense.
- (c) Informing the applicant or his advocate when statutory provisions or other causes prohibit or delay processing a claim.
- (d) Making such other inquiries as may be necessary.
- (e) Preparing an abstract of the relevant evidence in a document known as a "case précis".
- (f) Expressing an opinion on the merits of the claim in a form consistent with the Commission's practice and with the legislation.

2. Determining the degree of disability.

- (a) Reviewing assessments of disability recommended by the District Office Examiners, to determine that the rate of pension and changes in pension status are in accordance with the medical evidence and with the Commission's general instructions, and taking remedial action when required.
- (b) Assessing the degree of disability found on medical examination of pensioners living outside Canada.
- (c) Answering or preparing replies to inquiries with respect to the assessment of disability and other matters.
- (d) Preparing summaries of evidence with respect to the degree of disability, in the case of applications for a personal appearance under section 7 (3).

General

3. Advising or acting on other matters, including ..

- (i) Miscellaneous claims and awards, such as Attendance Allowance, Clothing Allowance, Automatic Age Increases, medical disability of pensioners' dependants, unreasonable neglect of pensioner to attend for examination, etc.
- (ii) Interviewing advocates representing veterans; the Chief Medical Adviser and his Deputy and his Assistant also interview veterans.
- (iii) Preparing from the records of the Department and the Commission such schedules or summaries of data as may be required for the proper conduct of the Commission's work, under direction of the Chief Medical Adviser.

4. Staff Training

- (i) Preceptorship, in which the new appointee watches a Medical Adviser at work and is instructed.
- (ii) Review by Chief of Division of the work of his juniors for periods ranging from months to years.
- (iii) Study of medical literature relevant to individual claims and to the medical or surgical or other special field in which the Medical Adviser is working or is likely to work.
- (iv) Studying the Pension Act, Table of Disabilities and the Commission's general instructions.
- (v) Studying working concepts in relation to the consensus of expert medical opinion from time to time, and, when indicated, preparing recommendations for revision.
- (vi) Maintaining required liaison with Treatment Services Department of National Defence, etc., under the direction of the Chief Medical Adviser.
- (vii) Attending special training sessions, short courses, clinics, etc., as authorized and directed by the Chief Medical Adviser.

The Medical Advisory Branch is required to deal with slightly more than 43,000 cases a year at its current workload. The figures given to your Committee by the Pension Commission for the fiscal year 1965-66 are as follows: 2

General

1. <u>SUBJECT</u>	<u>TOTALS</u>
1. Entitlement Claims.....	16,200
2. Discretionary Awards.....Section 14-2 & 25.....	43
3. Other Submissions.....(Blindness Allowance etc.).....	11,445
4. Submissions for Claims under Section 6(R.C.M.P. etc.).....	16
5. Backlog of Files.....(Average for last year).....	1,700
6. Review of Assessment.....(CPC 865).....	13,400
Total	43,441

REPRESENTATIONS AND EVIDENCE

GENERAL

War Pensioners of Canada (Toronto): This Association suggested that a pensioner's file should contain a summary of his pensionable disabilities and treatment entitlement. This would permit ready reference by district office staff when a pensioner approached the district office to determine treatment entitlement or make enquiry concerning pension or treatment rights.

The Association suggested also that there was need to clarify the guide lines used by the Pension Commission in regard to disabilities.

The recommendation submitted in their prepared brief was as follows. 3

12. Resolved that awards should be made according to some definite code, and these should be made up in schedules, and be available in written form to the proper authorities, and when communications are made with the veteran on the subject of awards and assessments, it should be made in clear and easily understandable language and figures and computations, so that guess-work is eliminated.

We believe that tables of awards, lists of disabilities, tables of percentages, and other mathematical formulae be printed and readily available to the competent authorities, such as doctors, advocates, outside and inside; and senior departmental officials, so that continuity, uniformity and impartiality be encouraged and mystery avoided.

In commenting upon this, Mr. W. B. Thompson, Secretary of the Association, suggested that information should be available to the public as to the basis upon which aggravation awards were calculated at 1/5ths, 2/5ths, etc., and as to the method by which the Commission arrived at assessments.

Assessments

War Pensioners of Canada (National): This Association recommended that assessment should be made by the D.V.A. consultant. The present system is that an assessment is made initially by a Pension Medical Examiner employed by the Commission, and such assessment is confirmed, reduced or increased by the Commission.

Representations and Evidence

Royal Canadian Legion: This organization claimed that the Medical Advisers were making reductions in assessments recommended by the Pension Medical Examiners. The following is quoted from the Legion's prepared brief:*

Reductions in Assessments by Medical Advisers

On occasion the Legion comes across cases where the recommended assessment by a pension medical examiner in the District Office is reduced by a Medical Adviser at Head Office. We understand this is usually done to keep assessments on a similar basis throughout the country. In the majority of cases, it has been noted that where the Medical Adviser suggests a reduction in assessment the district medical examiner seldom protests or objects and usually agrees by preparing an amended C.P.C. 865 form.

In the case of Mr. D. (186/13) an Appeal Board conceded entitlement for chronic bronchitis and arthritis both knees in January, 1965. He was medically examined for assessment purposes in March, 1965. The Pension Medical Examiner recommended an assessment of 10% for each of these conditions. The Medical Adviser in reply to this recommendation said, ".....In view of the accompanying reports, would you review again please and let us know if you feel these are correct." The Pension Medical Examiner replied that he had reviewed the file again and was of the ".....opinion that this man has a definite disability from his chronic bronchitis and arthritis of both knees which warrants an assessment of 10% each". The Medical Adviser concerned said, "In regard to your letter of 27.4.65, in the light of the disabilities shown, would you further review the file please". This resulted in the District Office forwarding an amended 865 assessing the chest and arthritic conditions at 5% each.

A subsequent study of the medical findings of the Legion indicated to us that the recommendations of the pension medical examiner were correct. We wrote the Commission asking for a re-examination and re-assessment.

A few years ago the Legion was interested in the case of Mr. D. (204/16) who had been awarded a 10% pension for hemorrhoids in 1950. Following an operation, pension was discontinued on 1.4.51. The veteran complained about the reduction but pension was not reinstated even though it was necessary for him to undergo another operation. Following two separate examinations the District Pension Medical Examiner who saw the pensioner recommended a 10% award but on both occasions the Head Office Medical Adviser intervened suggest

Representations and Evidence

that a nil assessment would be more in keeping with the degree of his disablement. It is interesting to note that the District Medical Examiner in a report to his Head Office on 12.8.55 stated, "There are other veterans in this District who are in receipt of pension at 5%, some even at 10% whom I feel have less discomfort than Mr. In view of his complaints and the fact that he has an anal structure, I would be in favour of an assessment at 5% rather than nil....". Following lengthy discussions and representations by the Legion the pensioner received an award of 5% with effect from 27.4.55, the date he was released from hospital treatment.

In the case of M. (503/1) entitlement had been granted for hemorrhoids with related perianal dermatitis assessed at 10%. In July, 1957, reports were sent from the District Office to the Head Office recommending an increase of assessment from 10% to 100%. Following psychiatric examination and much correspondence between the District and Head Offices, pension was continued at 10%. Subsequently reports were placed on the District file that the man was totally unfit for work. An 865 dated 21.3.58 indicated assessment for the pensionable condition was to be increased from 10% to 60% to be effective from 1.10.57. From that time onwards the man sought medical treatment through D.V.A. facilities, and on account of representations from other sources, an amended 865 went forward from the pension medical examiner to Head Office on 11.2.64 recommending an increase of assessment from 60% to 90%. The Head Office Medical Adviser did not agree with the proposed increase and assessment remained at 60%. As a result the pensioner requested a Hearing under the provisions of Section 7(3) of the Pension Act for the purpose of determining whether he should be receiving full assessment. This Hearing was held in October with no decision being available at this time.

The Legion appreciates that Medical Advisers at Head Office are endeavouring to keep assessments on the same level in all parts of Canada. We do suggest, however, that where the medical examiners and other consultants actually see the man and are in a better position to appraise his disability that more weight should be given to their remarks.

In comment on this matter Mr. D.M. Thompson, Dominion Secretary of the Legion, stated that the Pension Medical Examiners were making the initial assessment and were being overruled by the staff of the Medical Advisory Branch at head office.

Representations and Evidence

Canadian Pension Commission: In a prepared brief, Dr. W.F. Brown, Chief Medical Adviser to the Pension Commission, gave the following comment regarding assessments: 5

On page 88 of its brief the Canadian Legion discusses reductions in assessments by Medical Advisers.

In 1960 when this matter was brought to the Commission's attention the Medical Advisers listed a substantial number of cases in which an assessment was raised because of Head Office intervention. In an earlier retrospective study by a Senior Medical Adviser the majority of his letters had proposed a higher assessment than recommended by the District Examiner.

The Commissioners must approve changes in rate of pension. They examine reductions with special care and question a certain number. They practically never question proposed increases.

The Legion brief notes that, when a Medical Adviser proposes a reduction or objects to an increase, the District Examiner seldom protests. The fact is that he does protest in about 20% of cases.

Of the cases in which the Medical Adviser writes back to the District stating in his opinion the assessment is out of line, about 10% are increases.

and when he concurs it is generally on a reappraisal of the evidence in relation to the Table of Disabilities. The Examiner is free to express his opinion. Unresolved differences of opinion are referred to the Chief Medical Adviser.....

When they come back I study them all personally, and resolve the difference of opinion. I may have direct medical advice, or I may have senior P.M.E. review them in the district, and may have him call in for further examination of the P.M.E.'s. I might ask for a further consultant's opinion, and frequently transfer them from one district to another, and have them examined by consultants and P.M.E.'s both.

Representations and Evidence

White Slips *

Royal Canadian Legion: Mr. Donald M. Thompson, Dominion Secretary, referred to the proceedings of the Veterans Affairs Committee of October 14, 1963, in which a discussion had taken place between Mr. D.V. Pugh, Member of Parliament for Okanagan and Mr. T.D. Anderson, Chairman of the Pension Commission, concerning the use of the so-called "white slips" prepared by the Medical Advisory Branch of the Commission. This discussion was read into the proceedings at the hearing of your Committee and read as follows: 6

In the proceedings of the Veterans Affairs Committee of October 14, 1963, page 125, the following discussion took place:

Mr. Pugh: To get back to the duties of the Medical Advisers, as I understand it, every file that comes up goes through the Medical Advisers first. What information do they give to the Canadian Pension Commission before the hearing?

Mr. Anderson: They give us what we call a white slip containing all the medical evidence which they have been able to dig up from the file, from examination by the Pension Medical Examiner, from their medical records during service, and so on. This is their responsibility, to assemble all this material. They prepare this on a white slip and it is submitted to us as the complete medical evidence with regard to this claim. It is the medical evidence that is available at that point.

Mr. Pugh: Is it made available to the applicant?

Mr. Anderson: Yes.

Mr. Pugh: Is it made available prior to the hearing?

Mr. Anderson: The advocate has access to the files and he can also see these medical white slips if he wants to look at them.

Mr. Pugh: Is that normal routine, to have these sent out?

* The term "white slip" is used to describe the confidential report prepared by the Medical Advisory Branch, for advice of the Commissioners.

Representations and Evidence

Mr. Anderson: Yes, the Advocate has complete access to all of these items of evidence which pertain to the claim. He has that right under the Act. What he does in effect or what he actually does is to prepare a long precis covering all of this. He certainly has complete and unobstructed access to any information he requires.....

Mr. Fugh: At times would not the white slips go out at the first hearing?

Mr. Anderson: White slips do not go out. They are dealt with by the Commission only. They do not go out either to the man or to the Pension Advocates.

Mr. Thompson explained that these white slips had not been available to Service Bureau officers of the Legion, and he explained the development which led to the Legion having access as follows: 7

Occasionally when reviewing a file one would have been left on the file by accident by someone in the Commission and we would see and be quite impressed by the similarity and in some cases from the decision that would follow, the slip would be identical. In other cases it would be very similar with a very slight change; and we realize these white slips actually were what were influencing, to a great extent, the decision of the Commission in the board room as opposed to the board hearings, and we felt the Section of the Act gave us access to any information available to the Commission, any medical decision. We felt we should have these white slips and we made a request by letter which was turned down and we then asked -- the year, incidentally sir, was 1953 -- and we asked for a Committee of Interpretation under this Section and we appeared before this Committee of Interpretation and we made the point that either these slips were part of the material considered by the Commission or they were not, and if they were not it was a foolish waste of time and money to prepare them and if they were, we had a right under the Act to have access to them.

The result was the Committee agreed and recommended to the Commission and we then had access to whom in a very restricted way in that it was necessary for us to go to the office of the Secretary of the Commission to see these and to swear an oath that these would be seen by no one. I think in the early stages we had to take an oath on each one of the separate white slips. However, this has now become rather watered down and the requirements are not as stringent as they were then.

Representations and Evidence

In further clarification Mr. Thompson stated that the white slips did not appear in the summaries of evidence prepared by the Veterans' Bureau. Also, the bulk of the preparation of appeals is done by Veterans' Bureau staff in the district offices, while the white slips are available only at the head office level.

Canadian Pension Commission: The following discussion between Mr. Justice Woods, Chairman of your Committee and Mr. T.D. Anderson, Chairman of the Pension Commission, provides information relative to the use of white slips as follows. ⁸

Mr. Justice Woods: Would this be the appropriate time to ask about white slips?

Mr. Anderson: Yes.

Mr. Justice Woods: Well, I will ask you one brief question. If my premise is wrong, tell me. Why do these not form part of the file?

Mr. Anderson: The reason is fairly simple, I think. Originally they did not form part of the file because they were considered to be confidential between the Medical Adviser and the Commissioners --- confidential information.

Mr. Justice Woods: Why confidential?

Mr. Anderson: Because there is information contained in this white slip which, if generally known, in many cases might be detrimental to the welfare of the individual about whom the white slip is written.

Mr. Justice Woods: And are those the only kind that are made confidential?

Mr. Anderson: No, there was the other aspect that we have seen, for example, where the Medical Adviser, because of something existing in the white slip has recommended the decision despite the fact that it is the responsibility of the Commission to do so.

Representations and Evidence

Now, another basic reason, I think, for keeping these white slips confidential originally was so that the Medical Adviser would be able to give a completely uninhibited and unbiased -- well, I shouldn't use the word "unbiased" -- that he should be able to say exactly what he thought about the case and cite all the medical circumstances surrounding the case.

There is no question but that the minute they become open to others to see he was somewhat inhibited -- that if the matter of giving the Commission some essential information he was inhibited to some extent by the fact that --

Mr. Justice Woods: The result could be, then that a man's claim could be refused on grounds that were not open for him to know about; is that so?

Mr. Anderson: I think this could well be true, yes; but this is something that I didn't think you will ever get away from anyway. We don't know what goes on in the mind of the man adjudicating his claim.

Mr. Justice Woods: But we are not talking about the man who is adjudicating his claim; we are talking about what is before him in order to make up his mind.

Mr. Anderson: But surely the essential thing, in the long run, is what goes on in the mind of the man adjudicating on the claim?

Mr. Justice Woods: Well, I am not answering your question. I would suggest that it is important for him to know what he has before him.

Mr. Anderson: I don't disagree with that; it is important; but I still say that, in my opinion I think the final decision is made by them and what goes on in their minds --

Mr. Justice Woods: But surely on that basis you could make everything secret from the applicant, if this is your yardstick?

Mr. Anderson: No, I am not suggesting that we could make everything secret, but I am suggesting ---

Mr. Justice Woods: But if you can justify making one thing secret you can justify making other things secret.

Mr. Anderson: But I don't think it would be the correct thing to do.

Representations and Evidence

Dr. W.F. Brown, Chief Medical Adviser to the Legion Commission, spoke on the subject of white slips as follows: 9

Dr. Brown: At a very early date we were told one reason for keeping the Medical Adviser's slip confidential was that if it came out under his name it formed part of the adjudication proceedings and he knew he could be summoned before the Appeal Board -- that whoever was representing the man could summon the Medical Adviser.

This, in effect, would I suppose, start somewhat the old proceedings where they had a medical representative at the hearing. I think in the old tribunal days they had a medical representative at the hearing.

Mr. Justice Woods: Do you not think it would be equally or perhaps more, open to the same suspicion if they are kept secret?

Dr. Brown: They are certainly not kept secret, Mr. Chairman. The Legion can have access to them and the veterans organizations can have access to them.

H.W. Herridge, M.P.: Mr. Herridge stated that he objected to the use of the white slips as the procedure meant that the applicant did not have readily available to him all the information on which his case was decided.

The following discussion took place: 10

Mr. Justice Woods: There has grown up a practice of what is known as "white slips". I don't know whether you have heard of them or not?

Mr. Herridge: Yes.

Mr. Justice Woods: Well, what are your views on this. Do you think they should be part of the file and open?

Mr. Herridge: No, I am sympathetic to the complaints against the "white slips".

Mr. Justice Woods: You are sympathetic to the complaints against the use of them?

Mr. Herridge: Yes.

Mr. Justice Woods: That is, you think that the applicant should have readily available to him all information on which his case has been decided?

Mr. Herridge: Yes, that is right, rather than to have it just summarized on the "white slip".

Representations and Evidence

Veterans' Bureau: Brigadier P.E. Reynolds, the Chief Pensions Advocate, in his prepared brief, commented on the question of opinions given by the Medical Advisers on the white slips as follows: ¹¹

The Veterans' Bureau is not aware of the fact that the comments of Medical Advisers are available to Appeal Boards. If they are, it is agreed that they would carry undue weight with the medically-trained member.

The Veterans' Bureau believes that all medical opinion given at an Appeal Board Hearing should be given openly so that it is available to all concerned. It is considered that the provision of a Medical Adviser to sit with the Board to furnish opinion when required would make matters worse instead of better. If this Medical Adviser advised the Board privately, then, of course, the advice would not be available to the applicant, and if he were called as a witness he would virtually become a professional expert witness with respect to all phases of medicine and surgery. Expert medical evidence should be obtained from the specialists and practitioners who appear and testify under oath.

Later in his evidence Brigadier Reynolds gave the opinion that the white slips were not studied by members of an Appeal Board before an Appeal Board hearing but that, if the Appeal Board reserved its decision until its return to Ottawa, the members would have access to the white slips if they decided to review the file before making their decision.

Mr. Harry Bray: Your Committee received a letter from Mr. Harry Bray, a retired member of the Pension Commission, in which he made several proposals. One of these was that the Medical Adviser's precis* and the summary of evidence should be combined. This matter was the subject of a discussion which is recorded herein. ¹²

Mr. Justice Woods: Now this contains several suggestions, and one of them is that Medical Adviser's precis and summary of evidence, should be amalgamated. Would there be any advantage in this? What are your views on this? You can answer it or get your colleagues to deal with it.

* White slip.

Representations and Evidence

Mr. Anderson: I think there would, sir. As a matter of fact we have been making some effort to do something along that line. I don't know what precisely Harry Bray suggests, but it would be useful if members of the Appeal Board would have this evidence before them. I suppose one might say, in a way, that appeals - a good deal of the information or some of the information, contained in the medical precis does appear in the medical evidence although they must get it from that source, and there is some information there that I can't help but feel it would do very important to the appeal board. I think we would have to do a summary of these precis. There are several of them, and it would provide them with the information contained in these precis.

Mr. Justice Woods: You see some merit in this suggestion?

Mr. Anderson: I do indeed.

Neuropsychiatric Claims

The Royal Canadian Legion submitted considerable information concerning Commission decisions in regard to neuropsychiatric disabilities. It would not be practical to summarize these representations and they are recorded hereunder in full: 13

NEUROPSYCHIATRIC DISABILITIES

While it may be concluded that the problems to which we refer herein could well have been included in Part 1 under the Benefit of the Doubt, we feel particular reference should be made to the Commission's attitude to veterans who served during World War II and have had applications for entitlement denied for neuropsychiatric disabilities. We believe that the cases which we cite herein will clearly establish that the Pension Commission not only failed to invoke the provisions of Section 70, but has in fact made a determined effort not to accept responsibility on behalf of the Canadian Government for such disabilities. The Commission has even gone so far as to explore all possible angles in their desire to support their conclusion.

Mr. C. (172/7) had four separate enlistments in World War II, totalling in all five years. The Commission ruled adversely on his application for pension entitlement five times before pension was eventually awarded in 1957. To support its contention that Mr. C's disability was present prior to enlistment, the Commission obtained statements from more than twenty persons. Of these, four concluded that he was not quite normal. On careful examination, however, the Legion suggests that only two knew the veteran well enough to comment on his health prior to his enlistment. Despite this fact, in a subsequent ruling, the Pension Commission stated (in part)

Representations and Evidence

"The evidence as given by the applicant himself as well as that from his family and his neighbours satisfy the Commission beyond any doubt whatever that the condition in issue is definitely pre-enlistment. Leading people in the area where the applicant lived are believed and their evidence is conclusive".

If the members of this Committee will study these statements and accept the Commission's finding that they were "conclusive" we believe you will agree with us that they established the veteran was quite normal prior to enlistment, depicting few, if any, abnormal traits.

There was at this time on file a statement from Dr. Boothroyd, Head of Psychiatric Division, Sunnybrook Hospital, D.V.A., which had been obtained prior to the Commission's second adverse ruling. In replying to a communication from the Pension Commission he stated:

"The diagnosis is definitely Schizophrenia, paranoid, a condition which has now reached full bloom but the beginning of which were present during service though at that stage it was correctly diagnosed psychoneurosis. In short, the condition now diagnosed Paranoid Schizophrenia is one and the same as that previously diagnosed psychoneurosis but at a later state of development."

When entitlement was finally granted his disability was assessed at 100% and he was a patient in the Ontario Hospital.

The case of Mr. S. (639/15) also demonstrates the Commission's approach in claims of veterans seeking entitlement for nervous conditions. On 26.3.45 the Commission ruled that this veteran's disability was pre-enlistment, not aggravated during Active Force service. On 17.6.48 the Veterans' Bureau presented the claim for further consideration. Approximately thirteen months elapsed before the Commission got around to dictating another adverse decision. In the meantime an opinion had been obtained from a Consultant Neuropsychiatrist, Sunnybrook Hospital, who stated (in part):

"It is impossible for me to state from the examination of patient whether there is any definite change at the present time in his personality and ability compared to his personality and ability prior to enlistment. I would expect that there had been a change perhaps not of great magnitude."

Representations and Evidence

In 1961 Mr. S. approached the Legion for assistance with his claim. Representations were made and on 10.5.62 the Commission granted entitlement, but ruled that the disability was recorded on enlistment, aggravated only one-fifth. In establishing that there was a "record" within the meaning of the Act (see pages 61-62) the Commission stated:

"It would appear from the records and documentation on file that this veteran was mildly predisposed if not actually suffering from schizophrenia prior to enlistment, and that his unkempt appearance, sluggishness and indifference, together with low M Score noted the day following enlistment, were indicative of the condition under review. It would appear this would constitute a record within the meaning of "record". However, there is some evidence in the documentation of a slight aggravation during his Active Force service."

The Legion questioned the interpretation of the Commission that this in fact was a "record". It seems to us that such had been ruled out in an observation of 19.2.49 by one of the Commission's Medical Advisers. In writing the Pension Medical Examiner in Toronto he said:

"There can be little doubt from the history of this man and his family that his case is either pre-enlistment and not aggravated or if aggravated it would be slight in degree. The man, however, will be pensioned in the entire unless it can be established that there was a pre-enlistment record of mental disease. Up to the present, 'such record has not been obtained.'"

"Please have the social service worker make an attempt to obtain a definite record of pre-enlistment nervous ailment. His attention is called to the service medical record on the bottom of page 2 which states:- 'Past health reveals nervous breakdown at 38, etc. Every effort should be made to obtain a history from former employers, associates and to learn if there has been any family medical attendance or any attendance at clinics'."

On 20.11.62 the Commission ruled to confirm the earlier decision.

In september 1962 Mr. S. was advised that his entire disability was assessed at 25% and that he would receive pension at 5%. On 11.2.63 the Legion discussed the case with the Chairman of the Commission and two days later the following observations were placed on file by a Consultant Neuropsychiatrist:

Representations and Evidence

"(1) It would appear that this man was much worse on discharge as far as his schizophrenia was concerned than on enlistment. In consideration of similar cases two-fifths or three-fifths aggravation would appear more equitable.

(2) He is now more disabled than the 25% assessment indicated in the C.P.C. ruling of 26.11.62 according to the most recent medical reports.

(3) I would have thought 2/5ths of 80% would be near the mark."

Approximately two months later the pensioner's assessment was increased to 40%, pensionable 8%, effective 8.11.62.

The Legion again discussed the case with the Chairman of the Commission, who advised that Mr. S. would be called in to Sunnybrook for examination. This was done in September 1963 at which time the Consultant Neuropsychiatrist concluded:

"If this opinion is correct, the pensioner could be said to be totally disabled for any work other than casual labouring jobs."

He further stated that if the man were subjected to stress of working steadily in a factory, his condition would deteriorate and he would again require hospitalization. The man had also been classed as unemployable in the open labour market by the War Veterans Allowance Board.

On 7.11.63 the Commission again ruled that Mr. S's disability was pre-enlistment, "recorded on examination for enlistment, aggravated two-fifths.....". Total assessment was continued at 40% - pensionable 16%.

On 10.2.64 the Legion asked for a further review of the pensioner's assessment with the result that it was increased to 60%, pensionable 24%, effective only 7.2.64. A further Commission decision was rendered on 8.9.64 in which the Commission confirmed the degree of aggravation as two-fifths.

While we have in our files claims of other veterans in which the Commission has followed the pattern outlined above, we believe that this is based on an unwritten Commission "policy" with respect to neuropsychiatric disabilities. We feel the following earlier decisions of the Commission tend to establish this principle.

Representations and Evidence

Mr. M. (489/10) served from 28.5.40 to 16.8.45. Forty-six months of this was overseas. He was wounded in front-line service. On his service discharge, the Medical Board diagnosed a nervous condition and concluded that it originated in Sicily on 28.6.43. He was admitted to hospital six days after discharge from service and received treatment for nearly seven weeks. A statement was submitted from the family doctor who certified that he had treated the man prior to enlistment and that, "he was a healthy individual and had no signs of any nervous condition at that time." In 1949 and again in 1950 the Pension Commission ruled that this was a pre-enlistment condition, not aggravated during service.

Mr. P. (542/18) served from 2.7.40 to 18.9.45. Three years after enlistment he was seen by a Neuropsychiatrist who reported that Mr. P. was intelligent, co-operative, able to carry on satisfactorily and the prognosis was good. On service discharge there were complaints and a diagnosis of a nervous condition. The Psychiatrist noted a stable pre-enlistment history but referred to some maternal instability. He was seen in December 1946 by Dr. W. Ford Connell who stated:

"The diagnosis here is of marked constitutional neuro-circulatory asthenia, with a severe chronic anxiety state. The whole picture developed during Active Force service and was aggravated by it. The handling of this case demands expert and protracted psychotherapy, and I feel that the prognosis here, as far as obtaining nervous stability and satisfying the patient with his state of health is very poor. His present degree of disability is really quite high by reason of the gross upset of the autonomic nervous system which is present."

In a subsequent adverse ruling by the Commission reference was made to a report from Dr. J.M. McCullough. The decision stated:

"....certifies that he has seen the family physician and that he attended him in many illnesses which were only of a minor nature prior to his enlistment and at no time did he ever present any evidence of anxiety neurosis or neurocirculatory asthenia."

In that decision and in two others the Commission made no reference whatever to the report from Dr. Ford Connell, to the effect that the disability developed during Active Force service and was aggravated by it.

Representations and Evidence

Mr. W. (694/9) served overseas during World War II for more than three years. On service discharge there was a diagnosis of a nervous condition. A psychiatrist indicated that no treatment was required at that time. A year and a half later he was admitted to hospital at which time the same disability was again diagnosed. During hospitalization a consultant specialist stated:

"This man has a very severe psychic overlay of bizarre symptoms. Probably brought on by overseas strain and likely aggravated by a great deal of medical attention since 1946."

In 1960 a statement was obtained from a doctor who had treated him shortly after discharge from service. He said:

"I attended him for various complaints at that time, all of which were of a somatic nature and were evidence of a very severe state of nervous instability. I am, therefore, in a position to support his claim that he was in an extremely nervous state during the immediate post-war period."

A statement had also been obtained from another physician who indicated that he had been the family physician prior to service and that Mr. W. had been free from all serious diseases. He said he had always been a healthy, robust individual. When these latter two statements were referred to the Commission in support of Mr. W's application for pension, the Commission appeared to go to extreme lengths to discount the Specialist's opinion and made no reference whatever to the statement of the family physician. On five occasions, including an Appeal Board, the Commission ruled that the disability was pre-enlistment, not aggravated during service.

Mr. H. (357/7) was granted entitlement in 1959 for chronic brain syndrome associated with convulsive disorder. His disability at that time was assessed at 100%. There had been three adverse rulings, including a decision by an Appeal Board in 1953, all to the effect that the disability was pre-enlistment, not aggravated during service. When entitlement was conceded it was stated in the decision:

"It (the nervous condition) first became clinically manifest during service and there was definite worsening over the period of service. At the time of discharge there were clear indications in the medical findings suggestive of psychosis and these findings led to the man's discharge by reason of being medically unfit. The nature of the condition is such that there has been gradual progression since discharge."

Representations and Evidence

Mr. P. (546/7) was granted entitlement for his nervous condition in 1959. Prior to the favourable ruling, the Commission had on five occasions ruled that the disability was pre-enlistment, not aggravated. When the Commission considered the claim for the second time there was then on file an opinion from a D.V.A. Psychiatric Consultant in which he stated:

"I would like to add my opinion and the history as given on the file points to a definite aggravation of this man's psychiatric disability by his war service.

Mr. K. (400/1) served from 8.9.39 to 28.8.45. This sergeant was taken prisoner of war at Dieppe and remained with the Germans for 966 days. He was compensated through the War Claims Commission for having been shackled a total of 128 days, the maximum award. He was also compensated for four so-called "box-car trips". He was eventually granted entitlement for his disability in 1959 after the Commission had ruled adversely on three previous occasions.

In the original submission on behalf of Mr. K. the Legion forwarded statements of two former Commanding Officers, a former 2 i/c and the Regimental Sergeant-Major. All indicated that Mr. K. was healthy, stable and normal while with the Regiment and that he had never exhibited any signs of a nervous condition. On release by the Germans he was found to be a considerably changed person. In its decision the Commission stated that the evidence, "does not warrant a finding that the present nervous symptoms are attributable to service." In the next submission the Legion referred to a Psychiatric report in which the specialist stated (in part):

"It does seem that wartime experiences contributed to them (the man's symptoms)."

The Commission found that this constitutional condition was no worse on discharge than it had been prior to enlistment. Following further representations, the Commission granted entitlement on 15.1.59, stating (in part):

"On analysis of the record as a whole the Commission concludes that the expert medical evidence coupled with the reasonable lay evidence referred to in detail in earlier decisions raises a reasonable doubt as to whether the nervous condition from which the applicant suffers can properly be attributed wholly to factors lying outside his service experience. In these circumstances, and having regard to the provisions of Section 70 of the Pension Act, the Commission concludes that there was some degree of aggravation of the nervous condition during service."

Representations and Evidence

Mr. P. (548/2) - On 13.3.46 the Commission ruled that this man's nervous condition was pre-enlistment, not aggravated. Ten years later entitlement was conceded. On 8.2.44 during his service there was a diagnosis of a nervous condition indicating the need for hospitalization and sedation. He was graded 'S5' at that time. He was admitted to Westminster Hospital because of this disability and while there, was discharged from service. He remained in hospital nearly seven months. On discharge from hospital there was a firm diagnosis of a nervous condition. His disability was assessed at 10%. In ruling adversely on the application on 13.3.46 the Pension Commission stated:

"There is no evidence that the condition was any worse at the time of discharge than prior to enlistment."

When entitlement was subsequently granted, however, the decision referred to the fact that the first mental disturbance was in April 1945, while he was in service.

The following discussion on this subject took place: ^{is}

Mr. Justice Woods: On page 126 you say you believe that this is based on an unwritten Commission policy with respect to neuropsychiatric disabilities, and you are referring to the case above. Now what, just in a nutshell, is the policy that you see here?

Mr. Thompson: Well, from our experience of these cases it seemed that there must be a policy for this type of decision to occur in this way, and it has been said over the years previously, I believe, in discussions with officials of the Commission that the view was held that it was not good to pension people with nervous disorders because it tended to give them a crutch to lean on; and in correspondence down through the years this has, from time to time, been referred to, and there doesn't seem to be what we call, for the want of a better term, an unwritten policy; there seems to be a pattern of thinking here that is reflected in the decisions.

Mr. Justice Woods: That they view these claims, sort of, with a jaundiced eye?

Mr. Thompson: This is our experience. It is very, very difficult to establish, no matter how much evidence you accumulate, and it is very hard to press the case.

Mr. Justice Woods: In particular, with relation to the cases you cite here, is this one area where you would say that the conditions are more difficult to assess, to and to pin-point, than most other ailments?

Representations and Evidence

Mr. Thompson: Well, I would suggest that there are specialists in the field the same as there are in the other fields of medicine, and we find the specialists willing to give an opinion.

We realize it is not as clear cut as the case of a hand being amputated, but we find these specialists willing to study the case and give opinions.

In this field, from that point of view, it may be a ... more difficult than some of the other conditions, but it does seem to us that there is evidence available to justify a decision at an earlier stage.

Mr. Justice Woods: It is more difficult for the medical men, but it shouldn't be for the Commission?

Mr. Thompson: Not substantially difficult from the medical point of view; but, at the same time, we get these opinions and these psychiatrists don't seem to be reluctant to express their views; and we firmly believe that under the Interpretation Act and under Section 70 of the Pension Act, these cases should have been decided long before, and that the Commission shouldn't take such a hard line and make it so difficult to obtain entitlement.

Mr. Justice Woods: Is this an area where you are likely to get more conflicting medical views than in most other areas? I mean, if an area is a bit nebulous -- and I am not suggesting this is so -- but if it is you will find yourself more likely, I would think, seized of the responsibility of deciding between conflicting views, more so than in other areas?

Mr. Thompson: Well, this may be so, although in our experience there seems to be no great amount of conflict in the opinions. We realize there are many cases that would come before us where this might be more evident than in others, but we don't find it hard to obtain evidence from more than one specialist in these cases.

Mr. Justice Woods: Evidence that more or less agrees?

Mr. Thompson: Right.

Canadian Pension Commission: In a prepared brief, Mr. T.D. Anderson,

Chairman of the Pension Commission, stated as follows: 15

Representations and Evidence

Neuropsychiatric Disabilities

Of all the claims with which the Commission must deal these pose the greatest difficulties. Even psychiatrists' opinions differ widely as to cause and effect in these cases. The Commission has made an honest effort over the years to deal justly with hundreds of these claims. They have done so under very difficult circumstances. Many entitlements have been granted even in the face of strong opposition from at least some eminent psychiatrists. Those which have not been granted are, of course, always open to argument one way or the other, depending as usual upon the position one takes.

The Commission does not claim to have done a perfect job any more than have the psychiatrists but I can say quite honestly that we have done the best we could be expected to do in light of the evidence, times, and circumstances.

Dr. Brown, Chief Medical Adviser, and Dr. D.B. McKee, Chief of the Neuropsychiatric Division, Medical Advisory Branch, provided information in a brief to your Committee concerning the policy of the Commission in regard to neuropsychiatric cases. The brief stated that the Commission used the services of a part-time consultant, Dr. F. Rhodes Chalke, Professor and Executive Director of Psychiatry at the University of Ottawa. This information given in the brief was as follows: 16

In the Neuropsychiatric Division we deal with four main types of cases as follows:

- (1) Organic Neurological Diseases
- (2) The Psychoses
- (3) Personality Disorders
- (4) The Psychoneuroses

- (1) In general the neurological diseases present no problem in that such conditions as disseminated sclerosis are given a favourable opinion if even the most minor suggestion of consistent signs or symptoms are found in the service documents. It is my belief that a Medical Adviser can go no further than this without usurping the prerogative of the Commission to judge the value of evidence which finds no support in the record. Though I can give no names and numbers I have personal knowledge of one case of disseminated sclerosis which was recommended and adjudicated favourably on the single finding of absent abdominal reflexes at discharge without evidence of further signs or symptoms for several months. Another case of frontal lobe brain tumour received similar treatment though the medical documents contained no suggestive signs or symptoms.

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The only possibly relevant records were contained in non-medical reports of his pilot training where he was described as incapable of flying level or landing in a straight line. This, taken along with his Commanding Officer's report of a brief period of peculiar behaviour during training, was presented as suggestive evidence and so accepted by the Commission. Without a Medical Advisory recommendation I feel a favourable outcome would have been unlikely in either of these cases.

- (2) The psychoses present a more difficult problem. Three main types of cases arise. In the first of these, frankly psychotic manifestations were first recorded during service. In these the recommendations are almost uniformly favourable with the possible exception of an occasional case where a transitory incident during service is followed by many years of a normal and successful adjustment, and a subsequent later episode accompanied by a clear history of current precipitating factors.

In the second type of case, no nervous symptoms of any type are present in the service documents and, with my concept of a Medical Adviser's function, a uniform suggestion of "not attributable" is unavoidable.

In commenting on this Dr. Brown stated: 17

In the third type, personality disorder or neurosis may have been diagnosed during service to be followed at some later date by the appearance of a frank psychosis. In deciding whether the manifestations during service could be considered those of a psychosis, careful consideration is always given to the pre-enlistment history, the character of the service symptoms as compared with those of the later psychosis and the post-discharge record including the nature and time of onset of the psychosis. Consultants' opinions are given due weight in arriving at a recommendation, keeping in mind the fact that a consultant seeing the man in 1965 must base his opinion on the history provided in 1965. This history is often at complete variance with the record which may not be available to the consultant in question.

- (3) The personality disorders (in the absence of contributory brain injury or inflammatory disease) are considered, from a psychiatric standpoint, to be part and parcel of the man's endowment, just as are his stature or the color of his hair. In general, therefore, favourable opinions are not given in these cases on the grounds that they are relatively unchangeable features of a man's make-up and that any apparent deterioration takes the form of a super-imposed neurosis.

Representations and Evidence

- (1) The neuroses present our major problem. The psychiatric reports prepared during service are usually of the highest quality and, when taken along with almost unanimous psychiatric opinion, they indicate that the neuroses, too, are constitutional and, therefore, pre-enlistment conditions.

In commenting on this, Dr. Brown stated. 18

The problem to be decided then is whether any aggravation took place during service. In arriving at a recommendation consideration is given to the individual's childhood and family history, his pre-enlistment school and work record, his symptoms during service and the post-discharge medical and employment record. This latter record is almost invariably carefully explored at the same time as current psychiatric reports are requested. With this information at hand we attempt to develop a picture of the veteran's whole life and on this basis try to decide at a decision on the presence or absence of aggravation. All cases with even the slightest suggestion of merit are reviewed with the Head Office consultant in Psychiatry (Dr. F.R.C. Chalke) during his weekly visits. A fairly large number of cases are subject to this review, but in only a few cases does the consultant's opinion justify favourable presentation to the Commission.

Role of the Medical Adviser

Speaking of the role of the Medical Adviser, Mr. Anderson, Chairman of the Pension Commission, told your Committee: 19

The responsibility of the Medical Advisory Branch was to advise the Commission in regard to medical matters affecting those who have applied for pensionable disability, and to advise regarding assessment.

The following discussion provides information in regard to the activities of the Medical Adviser in regard to entitlement cases: 20

Mr. Justice Woods: But they do advise on entitlement?

Mr. Anderson: Yes, they do; they advise the Commission on the condition, as to when it arose, for example.

Mr. Justice Woods: My recollection is -- and I am quite subject to being corrected -- that Mr. Mutch was kind enough one day to take a number of files and go through them with two members of this Committee; and someone else was kind enough at a later date to do the same thing with the other member of our Committee. My recollection is that on some of these the Medical Adviser was advising the Commission as to the disposition of the case.

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Have you considered this to be a proper part of the function of the Medical Adviser?

Mr. Anderson: It has always been accepted as such.

Mr. Justice Woods: That is, the Medical Adviser takes the medical evidence, relates it to the statute and says to the Commission "This is what you should do"?

Mr. Anderson: No; he simply gives his opinion to us.

Mr. Justice Woods: He says: "This is what I think you should do"?

Mr. Anderson: What he thinks we should do--yes.

Mr. Justice Woods: He doesn't take the evidence simply and say to the Commissioner "This is what this means. These are the medical conclusions that should be drawn from this evidence," and let the Commissioner then take that and apply it to the statute himself?

Dr. Brown: He makes a medical analysis of the claim and then summarizes it. This is summarized with the Medical Adviser's comments, and in the comments he discusses the aspects of the claim and puts in his conclusions.

Mr. Justice Woods: I notice in a number I went through that in some instances the Medical Adviser was giving what I, as a layman, would describe as a medical opinion, and he was saying "If there is this and if there is that then the conclusion that can be drawn from this is that a certain condition existed at a certain time".

Dr. Brown: Yes.

Mr. Justice Woods: And then the Commissioner is left to take that and apply it to the Statute.

Dr. Brown: Yes.

Mr. Justice Woods: And come up with his findings; in other words, the Medical Adviser seems to have done the whole thing; he seems to have applied it to the statute and said to the Commissioner "This is the way I believe you should decide this". I am just wondering if both are acceptable, or which is the better, or is there a pattern here.

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Dr. Brown: Well, his opinion should be within the confines of the Statute. In other words, if it is venereal disease and it was incurred in Canada and he didn't serve overseas the Medical Adviser would have to give an opinion on the V.D., which is a medical opinion, and put it within the framework of Section 14.

Mr. Justice Woods: But he would report, then, in the case like the one you have suggested, presumably, that "...having considered all the medical evidence my view would be this condition arose at a certain camp on a certain date?"

Dr. Brown: That is right.

Mr. Justice Woods: And the Commissioner then would go to the Act and say? "In view of this opinion this man is out; he doesn't fall within the Section"?

Dr. Brown: Yes.

Mr. Justice Woods: But would you think it would be open for the doctor to say "It occurred at such and such a time and such and such a place and therefore he doesn't come within Section such and such."

Dr. Brown: That is right.

Mr. Justice Woods: Is that his job?

Dr. Brown: That always has been his job so far as I am aware.

Dr. Brown referred to the role of the Medical Adviser, in a prepared brief, as follows: 21

On page 36 of the Legion brief, it is stated that in the Legion's opinion the Medical Advisers are adjudicating and the Commissioners are acquiescing, which is contrary to the legislation. I would like to make a remark here, as possibly I am in a good position to do so. I wish to point out that I have been in the front office of the Commission's Medical Advisory Branch for over 19 years, to be exact 20 years next July, and in that time, week in and week out, there have been on an average, 10 to 30 cases a week coming in to my office from various Commissioners for further information, advice, requests for further action, and for many other reasons. It will be realized that the Commission is not bound by expressions of opinions by the Medical Advisers and upon occasion does, in fact, reject or vary the Medical Adviser's opinion in accordance with Commission judgement.

Representations and Evidence

The discussion from the proceedings follows: 20

Mr. Justice Woods: Just before we leave this we had some discussion the other day in which you participated.

Dr. Brown: What's that?

Mr. Justice Woods: As to the role of the Medical Adviser.

Dr. Brown: Yes.

Mr. Justice Woods: In assisting the Commissioner with his responsibilities.

Dr. Brown: Yes.

Mr. Justice Woods: You say here, "The Commission is not bound by expressions of opinion by the Medical Advisers and upon occasion does, in fact, reject."

Dr. Brown: They do.

Mr. Justice Woods: Can you illustrate or sort of advise for my own information, the sort of circumstances where this would occur or can it be done? Is it just a matter of some advisers being different?

Dr. Brown: Of course, everyone is different to some degree.

Mr. Justice Woods: That's well established medically, I gather?

Dr. Brown: There are a number of incidents in which the Medical Adviser may feel pre-enlistment is not aggravated, and the Commissioner thinks it is. He may bring it back and discuss it with me, and we may rule it pre-enlistment or rule that it occurred during service.

Mr. Justice Woods: On your advice he may have some doubt?

Dr. Brown: Yes, usually they are in a favourable bracket.

Mr. Justice Woods: Yes, we would expect that.

Dr. Brown: Yes.

Mr. Justice Woods: Now the other day when we were discussing this, as I recall, I won't put it that way, but the other day I indicated to you, I believe, that I had discerned at least two different types of approach on the part of the Medical Adviser in a few files that I had reviewed, and that in some instances, the white slip or information going to the Commissioner, had been phrased in a way that, in effect, told the Commission

Representations and Evidence

the decision that the Medical Adviser felt he should give on a case, and others were phrased so that it appeared that the Medical Adviser had been given an opinion on the validity or weight of the medical evidence, and leaving the Commissioner to apply it to the Statute.

Dr. Brown: Yes.

Mr. Justice Woods: Now is there any difference, as far as you know, between the likelihood, of the Commissioner not going along with this type of advice or thinking? Do you follow the question?

Dr. Brown: Yes, in the Medical Adviser's comment if there is some doubt in his mind concerning the exact opinion that should be given, he usually-he alludes to this in his comment and gives an opinion.

Mr. Justice Woods: But if the Medical Adviser writes up his assessment of the medical situation and then says, in effect, this fellow should not have a pension would this be more apt to be the basis of rejection on the part of the Commissioner than the other type where he confines himself to medical matters?

Dr. Brown: If his opinion is in any way contrary to the Medical Adviser's opinion he will either change it to suit his opinion or bring it back for further evidence or ask for further information. Does that answer your question?

Mr. Justice Woods: I don't think it does. I realize I am posing a pretty difficult question to you, but you indicated in an answer to my first question, and with an elaboration on your statement here, that sometimes a Medical Adviser's advice is not taken, and I asked you to illustrate this.

Dr. Brown: That is right.

Mr. Justice Woods: Now there are two types of Medical Advisers that report to the Commissioner?

Dr. Brown: That is right.

Mr. Justice Woods: That is what you have noticed?

Dr. Brown: Yes.

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Mr. Justice Woods: Now does it make any difference whether it is in one form or the other with relation to the likelihood of it being rejected by the Commission?

Dr. Brown: I would think if there were some doubt implied that the Commissioner would go ahead and take a good opinion himself, but if he were blank - if it were a blank rejection and he thought differently he would bring it back.

Mr. Justice Woods: Then he would take it back, and probably discuss his reasons for the Medical Adviser bringing it into the statute instead of stopping for the medical opinion?

Dr. Brown: Yes, we have a library in our office, and he will bring it back and we will go into the problem.

Veterans' Bureau: Your Committee referred to the evidence given by Dr. W.F. Brown, Chief Medical Adviser, to the effect that the Pension Commission was not bound by expressions of opinion given by Medical Advisers.²² In commenting upon this statement, Brigadier P.E. Reynolds, the Chief Pensions Advocate stated: ²³

In order to compare Commission decisions with Medical Advisers' white slips the Veterans' Bureau extracted 50 decisions at random from the daily batch of decisions arriving at our statistics section. These decisions consisted of favourable and unfavourable entitlement rulings pertaining to Active and Regular Force claims, consequential rulings, change in diagnosis, degree of aggravation, etc.

It was observed that the opinion of the Medical Adviser was not followed in only 2 of the 50 cases. In every other instance the opinion of the Medical Adviser became word for word, the decision of the Commission.

The following discussion occurred with Brigadier Reynolds concerning the role of the Medical Adviser: ²⁴

Mr. Justice Woods: Incidentally with regard to this form of these recommendations, we had some discussion of it with Dr. Brown as I recall, and someone else. Does the Veterans' Bureau feel that it is right and proper for the Medical Adviser to in effect advise the Commission as to what finding they should make or should he limit himself to the evidence.

Representations and Evidence

Brigadier Reynolds: No, we feel, strictly speaking, the Medical Adviser should only advise the Commission with respect to the medical aspects of the claim, and that he should not make any recommendations as to whether entitlement should be awarded. He could say that there is a record of bronchitis during service, and that was the start in his opinion of the condition claimed for, but we don't think he should say that it is recommended that a finding be made "not attributable to service".

Mr. Justice Woods: You don't feel that he should apply the Act to it although he may know the Act. He should not apply it to the evidence.

Brigadier Reynolds: Yes.

Mr. Justice Woods: This is the Commissioner's job.

Brigadier Reynolds: But under the present practice, as we understand it, in which the white slip becomes very important in the decision dictating process, we think he should apply the Section ---

Mr. Justice Woods: Pardon?

Brigadier Reynolds: That under the present practice in which we understand that the white slip is very important in the Commission decision dictating process in which recommendations are made, then the recommendations should not be made without giving full effect to Section 70.

Mr. Justice Woods: As I recall it, certainly those that I perused, the decision was practically taken from the white slip word for word, certainly in some instances.

Brigadier Reynolds: We think that that is the main reason for the large number of claims being successful on appeal.

Mr. Justice Woods: Yes.

Brigadier Reynolds: Because the inference of the white slip is not there.

Mr. Justice Woods: But then your position here is that first of all, it should not be done the way it is being done in some instances now ---

Brigadier Reynolds: Yes.

Mr. Justice Woods: --- but if this is to continue, that is if the Medical Adviser is in effect to dictate the decision ---

Representations and Evidence

Brigadier Reynolds: Yes.

Mr. Justice Woods: --- which you don't agree with --

Brigadier Reynolds: No.

Mr. Justice Woods: --- he should be applying the benefit of the doubt in full measure.

Brigadier Reynolds: Right.

Commissioners Power and Decker: Mr. W.P. Power and Mr. D.G. Decker, two members of the Commission, appeared before your Committee in order to provide information from the viewpoint of the individual Commissioner. In regard to the Medical Advisory Branch Mr. Power gave the following opinion: 25'

The Medical Advisory Branch is, as you know, seized with the duty of assisting these claims medically when they first come in and, through custom I presume, they have developed to the position where they consider themselves to be - and I think generally are considered by us to be - medical-legal experts, so we rely quite heavily on their initial opinions in preparing the administrative decisions.

But I think I can say quite definitely - speaking for myself anyway - without casting any aspersions on their knowledge, that when I am faced with a consultant, or several of them, who either categorically denies their proposition or else shades it and explains the reasons why he does this, I would feel that on the basis of the claim as it is before me I generally speaking would accept his views, although not necessarily. There are occasions for instance when we are faced with consultants who are unquestionably outstanding in their field, but we learn from experience that they are also very pension-conscious and they are apt to perhaps shade their opinions a bit. So we would like their opinion confirmed by others.

This is merely a matter of experience and I am not trying to downgrade their opinions. But the trouble is if you see these people coming in constantly you begin to ask yourself questions naturally; it is the human thing to do. But generally speaking my personal view is that the consultant's opinion should predominate with us as laymen.

Representations and Evidence

Commissioner Power stated that he viewed the Medical Adviser as an "expert medical witness".

The following discussion took place on this aspect: 26

Mr. Power: They are all experts in the legal sense but some are more expert than others. I mean there are some - take G.P.'s for instance - some do not deal with the variety of cases such as does the G.P. every day, but they specialize in one particular field and they acquire a certain status that is recognized, not only by others in the medical profession but by our own department, because they are sometimes hired as consultants by our department. A good proportion of the people who appear before us as specialists are departmental consultants.

Mr. Justice Woods: Well, then, generally if the medical opinion of a member of the Medical Advisory Branch then is in conflict with the opinion of a consultant, you tend to take the Medical Advisory Branch's opinion?

Mr. Power: I think it is fair to say yes, sir.

Mr. Decker spoke on the role of the Medical Adviser as follows: 27

Mr. Decker: I would endorse what Mr. Power has said - no conflict here, I would also add, agree with him, that in the final analysis, if it is a choice as to what advice we take, all things being equal, it will be the specialist consultant who comes before us.

But very often we run into this situation, where there is conflict. You have the consultant who has seen the file perhaps the night before. Now, we do have this knowledge that our own consultants, or Medical Advisers, who sometimes seek the advice of consultants, they have the record. They know the general record and their opinions are expressed on the basis of that.

Now, I can think of several instances where a consultant has come in whose qualifications would not be questioned by anybody nor would his opinions, but when we get down to the final points of the case and ask questions "Doctor, did you know that so-and-so happened at a certain point of time"? - the answer very often is, "I am sorry, I did not know". Then the obvious question is, "If you had known would you have given the opinion which is Exhibit 74?" and honesty is there and the answer is "no" without a qualification.

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But I agree with Mr. Power. My personal reaction is that when a consultant comes and we are satisfied he has all the facts, particularly when he knows the man and particularly if he is a consultant of one of the treatment hospitals, then his weight of evidence is considered - in other words, his opinion over the opinion of our own people.

I may add this, sir. There has been no reaction or conflict in the minds of our own people over this point. They are satisfied that we have weighed all the facts.

Dr. B. Laurin, Assistant to the Chief Medical Adviser, provided information to the effect that the Medical Advisory Branch was required to review all applications for entitlement. In addition the Branch was required to review the results of medical examinations and to approve reductions, increases, or decisions of "no change" in pension. A report on this subject, filed by Dr. Laurin, follows: 28

The Medical Advisory Branch is responsible for submission to the Board Room cases under the following sections of the Pension Act:

(1) Essentially entitlement:

13
14
15
28(3)
30
50)
51) In part.
52)

(2) Not strictly entitlement:

5(3)
(Summary of Evidence in part for the purpose of Section 7(3))
18
19
20
21
24(2)
25 (In some instances)
28(2)
(Automatic age increase as per tab disabilities)
29(3)
30
31
32
36(3)(b)(ii)
39(5)

Representations and Evidence

(3) Pursuant to duties imposed to the Canadian Pension under Section 6 of the Canadian Pension Act:

Medical Advisers have to prepare claims:

(a) Under Section 22(1) of The Royal Canadian Mounted Police Continuation Act as well as under Section 27(1) of the Royal Canadian Mounted Police Superannuation Act.

(b) Claims under the following sections of The Civilian War Pensions and Allowances Act;

7 - (Canadian merchant seamen, salt water fishermen)

11 - (Personnel of Canadian ships or certified non-Canadian ships)

18)

19) Auxiliary Service Personnel

20)

22 Canadian Fire Fighters

35 Air Raid Precautions Workers

46 National Resources Mobilization Act

49 Voluntary Aid Detachment

55 Overseas Welfare Workers

60 R.A.F. Transport Command

With regard to the number of submissions on entitlement, our figures are somewhat over 1,350 per month on an annual basis. With regard to the number of cases for assessment, still on an annual basis, our figures are somewhat over 1,700 per month.

DVA Consultants

Concerning the work of DVA consultants, your Committee records the following discussion with Dr. W.F. Brown, Chief Medical Adviser: 29

Mr. Justice Woods: The Committee would appreciate some further clarification concerning the use of D.V.A. consultants. In particular is there conflict of interest in that D.V.A. consultants are used to furnish opinions as regard to initial pension applications, and the same consultants are used by the Veterans' Bureau when they require medical opinion to support an appeal?

In other words they appear in one sense perhaps to be wearing two hats.

Dr. Brown: That is right.

Mr. Justice Woods: Is there any problem here really?

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Dr. Brown: Well, it is quite possible there could be a conflict of interest, and I think at times there is, although I cannot produce a case right at my finger tips to illustrate it all at. But I think there has been.

Mr. Justice Woods: You think it leads to any unfairness to the veteran - or it could?

Dr. Brown: No. I think if anything it would be in the veterans' favour.

COMMITTEE RECOMMENDATIONS

(94) That the operation of the Medical Advisory Branch be expedited as follows:

Operation to
be Expedited

(a) The Medical Advisers be freed of responsibility in regard to supervision and clerical work, to permit them to concentrate on the development of their function of providing medical opinions for the Commission.

Medical Ad-
visers not
to Clerical
work

(b) A specially-trained clerical section be established in the Medical Advisory Branch under a qualified supervisor, reporting to the Chief Medical Adviser; this section to operate under the following principles.

Clerical Sec-
tion to be
Established

(i) Specialized groups within the section would be trained to deal with various medical areas.

Specialized
Groups

(ii) The staff of this section would be responsible for screening all files prior to submission to a Medical Adviser, and to flag pertinent documents.

Screening
of Files

(iii) The staff would prepare precis of the non-medical aspects from a review of the documentation, including such matters as the previous rulings of the Commission and the service history.

Non-medical
Precis

(iv) Where appropriate, the staff would prepare precis outlining the medical history of the case to facilitate the task of the Medical Adviser in his review.

Medical
History
Precis

(c) The existing system under which Medical Advisers are permitted personal clerk-stenographers be retained except that, over a period of time, the work now being done by these clerk-stenographers be transferred to the proposed clerical services section with the object of revising the responsibilities of these clerk-stenographers to those of a private medical secretary.

Medical
Advisers to
Have Medical
Secretaries

(95) That the role of the Medical Adviser be restricted to that of providing medical opinion to the Commission in regard to applications for pension.

Role of
Medical
Adviser

Committee Recommendations

(96) That the system which provides for the preparation of a white slip by a Medical Adviser, which is in the form of confidential advice to the Commission on a pension application, be replaced by a system which entails the preparation of a "medical precis" based on the following principles:

Medical
Opinion In
Precis Form

(a) The medical precis shall not be confidential to the Commission only, and shall be placed on the file and be available for examination by those who have access to the departmental files.

Not
Confidential

(b) The precis shall furnish an opinion from the Medical Adviser with respect to the medical aspects of the pension application.

Medical
Adviser's
Opinion

(c) Where such opinion is being written in connection with an application previously dealt with by the Medical Advisory Branch, the precis shall either refer to, or shall contain a condensation of, all previous advice on the case given by the Medical Advisory Branch.

Previous
Opinions

(d) The precis shall not contain opinion as to whether or not an applicant for entitlement can qualify under the Act or the policies of the Commission.

Not To
Comment On
Entitlement

(97) That the Commission undertake a study to determine whether or not a section should be established within the Commission to determine which cases should be submitted to the Medical Advisory Branch for opinion.

Selection
Of Files
For Opinion

MEDICAL ADVISORY BRANCHCOMMENTGeneral

It is obvious that the Medical Advisory Branch may be expected to, and does, play a role of the utmost importance in the determination of many applications for rights authorized by the Pension Act. It is apparent also that the role of the Commissioner in making decisions must be assisted, rather than directed, by the Medical Advisers.

Your Committee appreciates that the requirement to secure and maintain a proper balance between these two responsibilities will constantly present a problem. This arises, if for no other reason, from the closeness with which the Commissioners and the Medical Advisers work, and the overlapping of the factual background of the problems with which they deal.

While the Medical Advisory Branch should play a conspicuous role in the work of the Commission, it should not dominate it. Your Committee has no way of determining with any degree of accuracy how far, if at all, such domination has developed. There are several areas, however, in which present methods and procedures could tend to such an end.

Your Committee observes that, in accordance with the practice of the Commission, the Medical Advisory Branch must provide an opinion on all claims requiring medical advice and, at all levels of procedure, on matters of entitlement and those involving discretionary consideration by the Commission.

The Annual Report of the Canadian Pension Commission showed that during the fiscal year 1964-65 the grand total of applications for entitlement was 10,501.

COMMENTClerical Duties

Your Committee received a heavy volume of complaints concerning delays in pension adjudication. All applications for entitlement, under present procedures, come to the Commissioners through the Medical Advisory Branch, as do many claims for discretionary benefits. It follows that any lack of efficiency in the procedures of the Medical Advisory Branch could represent a serious bottleneck. The result would be a slowing down of the normal flow of pension applications.

Your Committee has not attempted to analyze the effectiveness of the methods and general administration of the Medical Advisory Branch. It was ascertained by your Committee staff, after the conclusions of its hearings, that a survey had been made of the Medical Advisory Branch by the Methods and Inspection Division of the Department of Veterans Affairs in March, 1961. Your Committee was provided, on a request to the Commission, with a copy of this report which is identified as "Project #16 of the Methods and Inspection Division."

This report was helpful to your Committee as it provided additional information to that already obtained by its staff in regard to the administrative procedures followed within the Medical Advisory Branch. Your Committee observed that the Medical Advisers (who are all persons with medical training) were required to spend a considerable amount of time in researching individual files. Also, they were required to supervise, within their own offices, the staff who carried out clerical functions.

Your Committee is impressed with the high calibre of the work being performed by the Medical Advisers, but is critical of the system which means that they are unable to give all of their time to their chief

COMMENTClerical Duties

responsibility, i.e., that of preparing opinions for the Commission in regard to pension claims. Accordingly, your Committee has suggested some re-organization which would obviate the necessity of these Medical Advisers having to spend professional time in matters which might be handled by properly trained clerks.

In this respect, your Committee's recommendation envisages the establishment of a Central Clerical Division, which would have the responsibility to provide clerical services for the Medical Advisers. This suggestion was advanced in the report on Project #16 by the Methods and Inspection Division. However, the changes recommended by your Committee differ on one significant point. The Methods and Inspection Division Report proposed that the existing staff of clerk-stenographers should be detached from the offices of the Medical Advisers and placed in a central pool. This would have the disadvantage of depriving the Medical Advisers of very valuable assistants. The work load of the Medical Advisers is of such proportion now that, in addition to the services of the proposed clerical services section, they require the services of private medical secretaries in their individual offices.

Your Committee's recommendation is that the role of these clerk-stenographers should gradually become that of medical secretary and stenographer. The responsibility for reviewing documents now borne by these clerk-stenographers should be transferred to the proposed clerical division.

The establishment of a clerical division within the Medical Advisory Branch is highly desirable. It is not a radical departure

COMMENTClerical Duties

to use non-medical staff in what are purely clerical matters of a medical nature. Your Committee notes that considerable use is made of lay staff in the Treatment Services Branch of the Department of Veterans Affairs. For example, the duties for an Administrative Officer 3 in the Admission Services Branch of the Department include: 30

Under direction, as Administrative Officer (Treatment) to be responsible for all non-medical matters in connection with the interpretation and application of the Veterans Treatment Regulations; to supervise subordinate staff engaged in administrative matters relating to entitlement to treatment, out-patient clinic, authorization of ancillary benefits, payment of medical and hospital accounts for treatment from non-departmental sources and recovery of treatment charges from Provincial Hospital Insurance Commission and other bodies; to supervise the preparation of documentation, statistics, reports, accounts and the maintenance of appropriate records; to be directly responsible for interpreting and supervising the administration of the Veterans Burial Regulations; and to perform other related duties as required.

A clerical division as proposed by your Committee, manned by qualified lay personnel with experience in dealing with medical records, could render useful service. This could include screening files, preparing precis of the non-medical aspects of a case and, under supervision, the medical history of a case.

A file upon which a medical opinion was required could be prepared by the proposed clerical division and passed to the appropriate Medical Adviser through his medical secretary. This would facilitate the flow of pension claims in and out of the Medical Advisory Branch. At the same time, it should not lessen the quality of the medical opinion and it should enable the Medical Adviser to spend more of his time in dealing with aspects of the file requiring his expert competence.

COMMENTRole of the Medical Adviser

Sections 59(1) and 60(1) of the Act provide that the Pension Commission in considering applications for pension, may through its medical and other officers, make such enquiry as appears advisable into the facts upon which the application is based. Over the years the Medical Advisory Branch has taken on extensive responsibility. This has been done in full co-operation with the Pension Commission. In view of the importance that medical opinion plays in so many areas of pension work, it is not surprising that the Medical Advisory Branch has become, in many ways, a dominating influence in the work of the Commission.

This is not an unusual situation, in that most agencies of this type must employ experts in specific fields, who are engaged as staff advisers. Where these play a key role it is not uncommon to hear the criticism that the "tail is wagging the dog". The Medical Advisers of the Commission have not escaped such suggestion.

Pension work is carried out in a somewhat special atmosphere. The applicant considers that he has legislative rights arising out of the highest form of service to the State. The Commission is appointed by the Government to ensure that these rights are extended. The applicant looks to, and expects the Commission to protect his interests. For this reason, and others, caution must be exercised by pension administrators to ensure that everything possible is done to dispel any suspicion that the Commissioners are not running the show!

Your Committee noted a number of cases in which the white slips prepared by the Medical Advisory Branch contained not only medical

COMMENTRole of the Medical Adviser

opinion, but also opinion as to whether the application should qualify under the legislation. This, in the view of your Committee, exceeds the function appropriate to Medical Advisers. While the role of the Medical Adviser is one of great importance, it should not be allowed to pre-empt the role of decision making which belongs to the Commission.

Commission decisions which were phrased in the exact terms of the white slips prepared by the Medical Adviser make it all too easy to infer that the Medical Adviser, and not the Commissioner, had dictated the decision.

A close liaison exists between the Medical Advisers and the Commissioners. This is to be expected. This familiarity has no doubt led to short cuts which have been taken in the interest of effective administration. It would seem, however, that some Medical Advisers, in the preparation of their medical opinions, have developed a habit of telling the Commission what to say.

Your Committee is not suggesting that this practice stems from any improper motive, or that it has been adopted with any insidious purpose. It is the type of development that can come naturally through years of close association. Your Committee considers, however, that the practice should be discontinued and it is felt that this can best be done by a clearer delineation of the role of the Medical Adviser, as one whose responsibility is limited to providing medical advice.

Medical Precis

Your Committee considers that there is no place in pension adjudication for a confidential medical opinion, bearing in mind that this opinion is often the influencing factor upon which the Commission makes

COMMENTMedical Precis

its decision in regard to a pension claim.

Your Committee wishes to emphasize that the adjudication of pensions must be handled, in so far as is possible, on a completely open basis. There should be full disclosure of all information, and the opinions and facts upon which the Commission makes its decision should be known to the applicant and to those who represent him, and should be available for examination by all concerned. The existing practice, which is based on the "white slip" procedure explained earlier in these comments, ignores these principles. This practice leaves the Commission open to severe criticism that it receives confidential advice upon which its actions are based.

Your Committee is aware that the so-called white slips which contain the opinions of the Medical Advisers can be made available to the pensions advocates and others who represent the applicant. This does not eliminate what, to your Committee, is the objectionable aspect. That is, that the Medical Adviser is required to state his opinion in an unofficial memorandum which, even within the Commission, goes by the somewhat suspicious name of a white slip. In the eyes of the pension applicant and veterans organizations, the use of these has an unwholesome connotation.

Your Committee has recommended that the white slips be replaced by an official medical precis, in which the Medical Adviser would furnish his opinion. If there is a requirement to protect the Medical Adviser, the precis need not contain the name of the author, whose identification could be shown thereon by a code symbol. Moreover, inasmuch as the

COMMENTMedical Precis

Medical Adviser does not conduct a personal interview, there would be little likelihood of an unsuccessful applicant being able to determine the name of the Adviser whose opinion may have been influential in an unfavourable decision from the Commission.

Assessments

Your Committee noted the observation made by the Royal Canadian Legion concerning the practice of the Medical Advisory Branch in reducing the amounts recommended by District Pensions Examiners in regard to the assessment of disabilities. It is the responsibility of the Medical Advisory Branch to examine the assessments proposed by district personnel, and to give to the Commission its opinions in respect of these assessments. This is, of course, a proper function of the Medical Advisory Branch.

Your Committee has recommended, elsewhere in this report, a system of appeal in regard to assessments. Therefore, should a district Pension Medical Examiner propose a specific assessment which is later reduced on advice of the Medical Advisory Branch, the pensioner would have available the facilities of an appeal system, assuming that your Committee's recommendations in this regard are accepted. This appeal would permit reconsideration of the type of case to which reference is made herein.

Psychiatric Claims

Your Committee received detailed complaints from the Legion concerning the handling by the Commission of psychiatric claims. It was not feasible to examine the validity of Commission policy, and the

COMMENTPsychiatric Claims

matter is one which could be decided only on the evaluation of medical opinion, on the basis of each individual case.

Your Committee considers that it is neither necessary nor pertinent to come to any conclusion, at this time, as to whether the policies of the Commission are correct.

Your Committee has recommended elsewhere in this report the establishment of a Pension Appeal Board, such to have access to independent medical opinion. Should this system be adopted, the veteran and those representing him could take advantage of the proposed Pension Appeal Board to decide questions at issue with the Pension Commission in regard to medical opinion. Disputes in regard to psychiatric claims could, of course, be resolved in this manner.

Selection of Files for Medical Opinion

Your Committee has aired its views, elsewhere in this section, regarding the importance of medical advice in pension adjudication. It is obvious that very many pension claims require an opinion from the Medical Adviser before a proper decision can be made. At the same time, your Committee questions whether the views of the Medical Advisory Branch are required on all the cases processed by that Branch under the present system.

It may be feasible to establish an office, possibly under the Commission's secretariat, charged with responsibility to review applications coming into the Commission, to determine which of these require medical opinion. This office could refer these cases to the proposed clerical section of the Medical Advisory Branch for screening.

COMMENTSelection of Files for Medical Opinion

The cases which did not appear to require medical opinion could be submitted directly to the Commission for decision. If the Commission, in adjudicating on the case, considered a medical opinion to be necessary, arrangements could be made to secure such opinion from the Medical Advisory Branch.

The establishment of an office to channel the flow of applications either to the Medical Advisory Branch or direct to the Commission would presumably represent considerable saving of time. This would be particularly true if, under the present system, cases in which no medical advice is needed are being diverted to the Medical Advisory Branch before being adjudicated upon by the Commission. The personnel charged with the responsibility for such screening would necessarily require a thorough knowledge of pension administration and legislation.

MEDICAL ADVISORY BRANCHREFERENCE

1. Letter, dated January 25th, 1967; from Dr. H.J. Richardson, Deputy Chief, Medical Adviser, Canadian Pension Commission, to your Committee.
2. Memorandum, dated January 17th, 1967; from Dr. B. Laurin to Deputy Chief Medical Adviser, Canadian Pension Commission.
3. Proceedings of Committee Sessions, Volume I, Page D-14
4. Ibid, Volume III, Page L-141
5. Ibid, Volume VI, Page AA-40
6. Ibid, Volume III, Page L-103
7. Ibid, Volume III, Page L-104
8. Ibid, Volume IV, Pages R-60-61
9. Ibid, Volume IV, Page R-62
10. Ibid, Volume V, Page S-5
11. Ibid, Volume VI, Page KK-103
12. Ibid, Volume V, Page AA-65
13. Ibid, Volume III, Pages L-175 to L-180
14. Ibid, Volume III, Pages L-180-181
15. Ibid, Volume IV, Page R-69
16. Ibid, Volume V, Pages AA-31 to AA-35
17. Ibid, Volume V, Page AA-32
18. Ibid, Volume V, Page AA-35
19. Ibid, Volume IV, Page R-63
20. Ibid, Volume IV, Page R-63
21. Ibid, Volume V, Page AA-26
22. Ibid, Volume V, Page AA-26
23. Ibid, Volume VI, Page KK-126
24. Ibid, Volume VI, Page KK-138
25. Ibid, Volume VII, Page MM-31
26. Ibid, Volume VII, Page MM-32
27. Ibid, Volume VII, Page MM-32
28. Report dated May 24th, 1966, prepared by Dr. B. Laurin supplied to your Committee by Dr. F.W. Brown, Chief Medical Adviser, Canadian Pension Commission with his covering memorandum of May 24th, 1966.
29. Proceedings of Committee Sessions, Volume VII, Page MM-66
30. Civil Service Competition No. 65, P-DVA-45.

